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THE
LAWS OF ENGLAND

BEING

A COMPLETE STATEMENT OF THE WHOLE LAW OF ENGLAND.

BY

THE RIGHT HONOURABLE THE
EARL OF HALSBURY
LORD HIGH CHANCELLOR OF GREAT BRITAIN,
1885-86, 1886-92, and 1895-1905,

AND OTHER LAWYERS.

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Companies, Offences relating to - - - ,, COMPANIES.
Convicts - - - - ,, PRISONS.
Coroners' Courts - - ,, CORONERS.
Criminal Lunatics - - ,, LUNATICS AND PERSONS OF UNSOUND MIND.
Ecclesiastical Offences - ,, ECCLESIASTICAL LAW.

For Election Offences	*See title*	ELECTIONS.
Extradition	,,	EXTRADITION AND FUGITIVE OFFENDERS.
Game Laws	,,	GAME.
Habeas Corpus	,,	CROWN PRACTICE.
Highway Offences	,,	HIGHWAYS, STREETS AND BRIDGES.
Inebriate Reformatories	,,	PRISONS.
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Vagrancy	,,	MAGISTRATES; POOR LAW.
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NOTE.—For Crimes and Offences not included in the above tables see the appropriate titles—*e.g.*, Cruelty to Animals will be found under title ANIMALS; Corrupt Practices under title ELECTIONS; and so on.

CROPS AND GROWING PRODUCE.

See AGRICULTURE; LANDLORD AND TENANT; SALE OF LAND.

CROWN LANDS.

See CONSTITUTIONAL LAW.

ABBREVIATIONS

USED IN THIS WORK.

A. C. (preceded by date) ..	Law Reports, Appeal Cases, House of Lords, since 1890 (*e.g.* [1891] A. C.)
A.-G.	Attorney-General
Act.	Acton's Reports, Prize Causes, 2 vols., 1809—1811
Ad. & El.	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1831—1842
Adam	Adam's Justiciary Reports (Scotland), 1893—(current)
Add.	Addams' Ecclesiastical Reports, 3 vols., 1822—1826
Adv.-Gen.	Advocate-General
Alc. & N.	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833
Alc. Reg. Cas.	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841
Aleyn	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649
Amb.	Ambler's Reports, Chancery, 2 vols., 1725—1783
And.	Anderson's Reports, Common Pleas, fol., 1 vol., 1535—1605
Andr.	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740
Anon.	Anonymous
Anst.	Anstruther's Reports, Exchequer, 3 vols., 1792—1797
App. Cas.	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875—1890
Arkley	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848
Arm. M. & O.	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842
Arn.	Arnold's Reports, Common Pleas, 2 vols., 1838—1839
Arn. & H.	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841
Asp. M. L. C.	Aspinall's Maritime Law Cases, 1870—(current)
Atk.	Atkyns' Reports, Chancery, 3 vols., 1736—1754
Ayl. Pan.	Ayliffe's New Pandect of Roman Civil Law.
Ayl. Par.	Ayliffe's Parergon Juris Canonici Anglicani.
B. & Ad.	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1834
B. & Ald.	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—1822
B. & C.	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822—1830
B. & S.	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870
Bac. Abr.	Bacon's Abridgment
Bail Ct. Cas.	Bail Court Cases (Lowndes and Maxwell), 1 vol., 1852—1854
Ball & B.	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807—1814
Bankr. & Ins. R. ..	Bankruptcy and Insolvency Reports, 2 vols., 1853—1855

Bar. & Arn.	Barron & Arnold's Election Cases, 1 vol., 1843—1846
Bar. & Aust.	Barron & Austin's Election Cases, 1 vol., 1842
Barn. (CH.)	Barnardiston's Reports, Chancery, fol., 1 vol., 1740—1741
Barn. (K. B.)	Barnardiston's Reports, King's Bench, fol., 2 vols., 1726—1734
Barnes	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol., 1732—1760
Batt.	Batty's Reports, King's Bench (Ireland), 1 vol., 1825—1826
Beat.	Beatty's Reports, Chancery (Ireland), 1 vol., 1813—1830
Beav.	Beavan's Reports, Rolls Court, 36 vols., 1838—1866
Beav. & Wal.	Beavan and Walford's Railway Parliamentary Cases, 1 vol., 1846
Beaw.	Beawes's Lex Mercatoria
Bellewe	Bellewe's Cases *temp.* Richard II., King's Bench, 1 vol.
Bell, C. C.	T. Bell's Crown Cases Reserved, 1 vol., 1858—1860
Bell, Ct. of Sess. ..	R. Bell's Decisions, Court of Session (Scotland), 1 vol., 1790—1792
Bell, Ct. of Sess. fol. ..	R. Bell's Decisions, Court of Session (Scotland), fol., 1 vol., 1794—1795
Bell, Dict. Dec. ..	S. S. Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols., 1808—1833
Bell, Sc. App.	S. S. Bell's Scotch Appeals, House of Lords, 7 vols., 1842—1850
Belt's Sup.	Belt's Supplement to Vesey Sen., Chancery, 1 vol., 1746—1756
Benl.	Benloe's (or Bendloe's) Reports, King's Bench and Common Pleas, fol., 1 vol., 1515—1627
Ben. & D.	Benloe and Dalison's Reports, Common Pleas, fol., 1 vol., 1357—1579
Bing.	Bingham's Reports, Common Pleas, 10 vols., 1822—1834
Bing. (N. C.)	Bingham's New Cases, Common Pleas, 6 vols., 1834—1840
Bitt. Prac. Cas.	Bittleston's Practice Cases in Chambers under the Judicature Acts, 1873 and 1875, 1 vol., 1875—1876
Bitt. Rep. in Ch. ..	Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol., 1883—1884
Bl. Com.	Blackstone's Commentaries
Bl. D. & Osb.	Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol., 1846—1848
Bli.	Bligh's Reports, House of Lords, 4 vols., 1819—1821
Bli. (N. S.)	Bligh's Reports, House of Lords, New Series, 11 vols., 1827—1837
Bos. & P.	Bosanquet and Puller's Reports, Common Pleas, 3 vols., 1796—1804
Bos. & P. (N. R.) ..	Bosanquet and Puller's New Reports, Common Pleas, 2 vols., 1804—1807
Bract.	Bracton De Legibus et Consuetudinibus Angliæ
Bro. Abr.	Sir J. Brooke's Abridgment
Bro. C. C.	W. Brown's Chancery Reports, 4 vols., 1778—1794
Bro. Ecc. Rep.	W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol., 1850—1872
Bro. (N. C.)	Sir R. Brooke's New Cases, 1 vol., 1515—1558
Bro. Parl. Cas.	J. Brown's Cases in Parliament, 8 vols., 1702—1800
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Part I.—Introductory.

SECT. 1.—*The Nature of Courts.*

SUB-SECT. 1.—*Definition.*

Meaning of "court."

1. The term "court" (*a*) has (*inter alia*) the original meaning of the King's Palace, and has acquired the meaning of the place where justice is administered, and thence again the meaning of the persons who exercise judicial functions under authority derived either immediately or mediately from the King. All tribunals, however, are not courts, in the sense in which the term is here

(*a*) "Court (Curia) signifies the King's palace, or mansion, and is more especially the place where justice is judicially administered" (Jacob, Law Dictionary, *sub voce* Court). "Court est diversment prise, ascun soits p le meason ou le Roy est present ove son ordinary attendants; et auxy le lieu ou justice est judicialment ministre." "Court is diversely taken, sometimes for the house where the King remains with his ordinary retinue; and also the place where justice is judicially ministered" (Termes dela Ley, *sub voce* Court). "Court, Latin cohort-em, cōrtem . . . at an early date the French word appears to have been associated with Latin *curia*, and hence apparently the series of senses under branches III. and IV., in which *curia* is the regular medieval Latin equivalent . . . III. an assembly held by the sovereign . . . IV. a court of judicature, of law, or of administration. 10. Applied to Parliament . . . 11. An assembly of judges or other persons legally appoined and acting as a tribunal to hear and determine any cause, civil, ecclesiastical, military, or naval" (New English Dictionary, Vol. II., pp. 1090, 1091).

SECT. 1. The Nature of Courts.

employed, namely, to denote such tribunals as exercise jurisdiction over persons by reason of the sanction of the law, and not merely by reason of voluntary submission to such jurisdiction. Thus, arbitrators, committees of clubs, and the like, although they may be tribunals exercising judicial functions, are not "courts" in this sense of that term. On the other hand, a tribunal may be a court in the strict sense of the term although the chief part of its duties is not judicial. Parliament is a court. Its duties as a whole are deliberative and legislative, the judicial duties are only partial. A court of investigation, like the coroner's court, is a court. The distinction appears to be not so much whether the particular tribunal is a court of justice, but whether it is a court in law (*b*). Many bodies are not courts, although they have to decide questions, and in so doing have to act judicially, in the sense that the proceedings must be conducted with fairness and impartiality, such as assessment committees, boards of guardians, the benchers of the Inns of Court when considering the conduct of one of their members, or the General Medical Council when considering questions affecting the position of a medical man (*c*). A meeting of a county council for granting music and dancing licences is not a court (*d*), nor are justices at a licensing meeting sitting as a court of summary jurisdiction (*e*).

Admission of the public.

As a general principle, all courts must be open to the public, though the judge may for good and sufficient reason order that the public, or a certain section of the public, shall be temporarily excluded (*f*).

SUB-SECT. 2—*Classification.*

The King's courts.

2. Courts may be classified in several ways. First, they may be divided into such as are courts of the King and such as are not. The latter class includes the palatine courts (*g*), where the King has parted with the *jura regalia* in the county palatine, courts baron (*h*) and the old sheriffs' county courts (*i*); all other courts are the King's courts.

Courts of record.

3. Another manner of division is into courts of record and courts not of record. Whether a court is a court of record or not depends on whether it has power to fine (*j*) and imprison (*k*),

(*b*) See judgment of FRY, L.J., in *Royal Aquarium and Summer and Winter Garden Society* v. *Parkinson*, [1892] 1 Q. B. 431, C. A., at pp. 446, 447. For Parliament, see that title; for coroner's court, see title CORONERS, Vol. VIII., p. 256.

(*c*) *Ibid.*, at p. 447. The College of Physicians, however, in dealing with cases of *mala praxis* is a court of record (14 & 15 Hen. 8, c. 5 (1523)).

(*d*) *Royal Aquarium and Summer and Winter Garden Society* v. *Parkinson*, *supra*.

(*e*) *Boulter* v. *Kent Justices*, [1897] A. C. 556.

(*f*) *E.g.*, under the Children Act, 1908 (8 Edw. 7, c. 67), s. 114. A court has inherent jurisdiction to order any case to be heard *in camerâ* (*D.* v. *D.*, [1903] P. 144; see also *Andrew* v. *Raeburn* (1874), 9 Ch. App. 522; *Mellor* v. *Thompson* (1885), 31 Ch. D. 55; *Badische Anilin und Soda Fabrik* v. *Levinstein* (1882), 24 Ch. D. 156; *Re Martindale*, [1894] 3 Ch. 193, *per* NORTH, J., at p. 200.

(*g*) See p. 120, *post*.

(*h*) See p. 216, *post*.

(*i*) See note (*t*), p. 118, *post*.

(*j*) "La est un difference perenter Amerciaments and Fines. For Fines sont Punishments certain, que cresceront expresment et ascun statute: & Amerciaments sont tiels que sont arbitrablemt impose p les Affeerors." "There is a difference between Amerciaments and Fines. For Fines are Punishments certain, which grow expressly from some statutes; and Amerciaments are such which are arbitrarily imposed by the Affeerors" (Termes de la Ley, *sub voce* Amercement).

(*k*) That is, to imprison by way of punishment and not merely for safe custody.

SECT. 1.
The Nature of Courts.

whether for contempt of itself or for other substantive offences (*l*). Courts of record are such as have been expressly made so by statute (*m*), or by implication of a statute, that is by having statutory power to fine and imprison, and courts of record at common law. These latter are such civil courts as have power to hear and determine, according to the course of the common law, actions in which the debt, damages or value of the property claimed is forty shillings or above, and such criminal courts as have power to fine or imprison. Courts not of record are those civil courts in which the proceedings are not according to the course of common law (except such as have been made courts of record by statute). All courts of record, with the exception of the courts of the counties palatine, are courts of the King, even though a subject or corporation has the benefit of the court, as in the case of borough and city courts of record (*n*). The proceedings of a court of record preserved in its archives are called records, and are conclusive evidence of that which is recorded therein (*o*).

Courts not of record.

(*l*) See *Groenvelt* v. *Burwell* (1699), 1 Ld. Raym. 454.

(*m*) The following courts have been made courts of record by statute. The High Court of Justice, by the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16; the Court of Appeal, *ibid.*, s. 18; the Court of Criminal Appeal, by the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 1 (7); the Court of Record for the Hundred of Salford, by the Salford Hundred Court of Record Act, 1868 (31 & 32 Vict. c. cxxx.), s. 4; the County Courts, by the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 5.

(*n*) Another distinction which has been drawn between courts of record and courts not of record is that in the former case a writ of error lay, and in the latter the proceeding was by way of writ of false judgment. Proceedings in error have been expressly abolished, in the case of criminal proceedings by the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20 (1), and in the case of civil proceedings in the High Court of Justice by R. S. C., 1875, Ord. 58, r. 1. (This rule is now repealed, but the abolition of proceedings in error remains in force). This rule was not expressly made to apply to inferior courts of record, but the effect of *Le Blanch* v. *Reuter's Telegraph Co.* (1876), 1 Ex. D. 408, C. A., is that the procedure by error is superseded by an appeal to a divisional court of the King's Bench Division. As, however, such appeals are limited to cases in which error would have lain, the distinction, if accurate, may still have practical importance. It may be observed that although the writ of false judgment has never been abolished by statute, it has become obsolete, as has also the writ of *recordari facias loquelam*.

The distinction, however, only appears to be accurate in the case of civil courts, for in the case of courts having criminal jurisdiction the criterion appears to be that courts having power to fine and imprison are courts of record, although the proceedings be not according to common law, and consequently the proceedings could not be challenged by writ of error, but only by *certiorari*; see *Groenvelt* v. *Burwell* (1699), 1 Ld. Raym. 454. "Where there is a jurisdiction erected *de novo* with power to fine and imprison, it is a court of record, for courts of record only can fine" (*ibid.*, p. 467). "He [HOLT, C.J.] compared it to convictions before justices of the peace out of sessions, upon which, though error does not lie, yet a *certiorari* lies" (*ibid.*, p. 469). In this case the court in question was that of the censors of the College of Physicians, who had, under the statute 1 Mar. sess. 2, c. 9 (1553), power to fine and imprison; but see *Miller* v. *Seare* (1776), 2 Wm. Bl. 1141; *Payne* v. *Wright* (1892), 61 L. J. (M. C.) 114, C. A.

(*o*) "Record est un Escript en Parchment, ou sont enroll Pleas de Terre, ou Common Pleas, Faits, ou Criminal Proceedings en ascun Court de Record; mes en Courts nient de Record come Admiraltie, Courts Christian, Courts Baron &c. lour Registrie de Procedure ne sont proprement dits Records: Mes Courts de Ley teign p Grant dl Roy sont Courts de Record." "Record is a Writing or Parchment, wherein are enrolled Pleas of Land or Common Pleas,

Superior and inferior courts.

4. A third manner of division is into superior and inferior courts. The Superior Courts are the House of Lords, the Judicial Committee of the Privy Council, the Supreme Court of Judicature, the Court of Criminal Appeal, and the Courts of Chancery of the Counties Palatine of Lancaster and Durham, and are all courts of record. All other courts are inferior courts, whether they are courts of record or not.

Origin of inferior courts.

5. The origin of the inferior courts, of which there are many varieties, may be traced back to the principle that justice should be taken to every man's door by constituting as many courts as there were manors in the Kingdom. They were primarily the court baron (*p*), which was incident to every manor, the hundred court (*q*), which was only a larger and more extended court baron, and the common law county courts, now practically extinct. To these were added numerous borough and other local courts (*r*), a variety of courts held by special officers for special purposes (*s*), and the modern county courts (*t*). They derived their general title of inferior courts because they were and are, in the great majority of cases, subject to the control and supervision of the Court of King's Bench or King's Bench Division as a superior court. A part of the original inherent jurisdiction of the Court of King's Bench was to examine and correct all errors committed by the inferior courts, whether in matter of law or in exceeding the jurisdiction that had been conferred upon them (*a*).

Jurisdiction of inferior courts.

6. The jurisdiction of an inferior court is defined by its constitution, which is either by charter from the King, Act of Parliament, or prescription, as amended or extended by any subsequent grant or legislation, or by order in council made under the provisions of the Judicature Acts, 1873 and 1884 (*b*). Such jurisdiction is generally limited to matters between residents in a certain locality, or to causes of action arising within prescribed metes and bounds, or to actions where the amount claimed is under a certain specified limit.

Distinctions between superior and inferior courts.

7. It is in connection with jurisdiction that we find the chief distinctions between superior and inferior courts. The jurisdiction of the superior courts extends in civil cases over the whole of England and Wales and the town of Berwick-on-Tweed, and over the foreshore to low-water mark (*c*), though in certain circumstances the jurisdiction may be more extensive, and the courts may take cognisance of personal actions in respect of contracts or torts though the cause of

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Deeds, or Criminal Proceedings in any Court of Record: But in Courts not of Record as Admiralty, Courts Christian, Courts Baron &c., their Registry of Proceedings are not properly called Records: But Courts of Law held by the King's Grant are Courts of Record" (Termes de la Ley, *sub voce* Record); see also Jacobs, Law Dictionary, *sub voce* Record. Records are no longer kept on parchment.

(*p*) See p. 216, *post*; and title COPYHOLDS, Vol. VIII., p. 10.

(*q*) See p. 214, *post*.

(*r*) See p. 129, *post*.

(*s*) *E.g.*, the Sheriffs' Courts (see p. 118, *post*), the Courts of the Commissioners of Sewers (see p. 220, *post*), and the various Ecclesiastical Courts, for which see title ECCLESIASTICAL LAW.

(*t*) See title COUNTY COURTS, Vol. VIII., p. 410.

(*a*) 4 Co. Inst. 71. As to jurisdiction, see p. 13, *post*.

(*b*) 36 & 37 Vict. c. 66, ss. 88—91; 47 & 48 Vict. c. 61, s. 18; and see p. 131, *post*.

(*c*) 1 Chitty's Archbold's Practice, 14th ed., p. 4.

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action may have arisen abroad or the parties be foreigners (*d*). An agreement which purports to altogether oust the jurisdiction of the courts is void, though parties may agree to postpone the enforcement of a claim by action in the courts until their differences have been settled in some other way (*e*).

Jurisdiction.

Primâ facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognisance of the particular court (*f*). An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary (*g*). The King's Bench, for example, is a court of universal jurisdiction and superintendency in certain classes of actions, and cannot be deprived of its ascendency by showing that some other court could have entertained the particular action. In an inferior court, other than a county court, unless the proceedings show on their face that the cause of action arose within its jurisdiction, the action cannot be maintained (*h*), and even in inferior courts with a local limit of jurisdiction it must appear that such limit is not being exceeded (*i*).

Judgments.

Another distinction is that while the judgment of a superior court unreversed is conclusive (*j*) as to all relevant matters thereby decided, the judgment of an inferior court involving a question of jurisdiction is not final (*k*); and another is that a plaintiff is liable to an action for executing the process of an inferior court in a matter beyond its jurisdiction, and cannot justify under such process, whether he knows of the defect or not; and that the judge and officers of such a court are liable to an action if they knew of the defect of jurisdiction (*l*).

Liability for exceeding jurisdiction.

(*d*) See title CONFLICT OF LAWS, Vol. VI., p. 177, and as to service out of the jurisdiction, see p. 57, *post*, and title PRACTICE AND PROCEDURE. For the criminal jurisdiction, see p. 55, *post*.

(*e*) *Scott* v. *Avery* (1856), 5 H. L. Cas. 811; *Horton* v. *Sayer* (1859), 4 H. & N. 643, 649; *Scott* v. *Liverpool Corporation* (1858), 3 De G. & J. 334; *Braunstein* v. *Accidental Death Insurance Co.* (1861), 1 B. & S. 782; and see titles ACTION, Vol. 1, p. 22; ARBITRATION, Vol. I., p. 445; and other cases there cited.

(*f*) *Peacock* v. *Bell* (1667), 1 Wms. Saund. 73; *Spurrier* v. *La Cloche*, [1902] A. C. 446.

(*g*) *Mostyn* v. *Fabrigas* (1770), Cowp. 172; 1 Smith, L. C., 11th ed., 604; *Derby* (*Earl*) v. *Athol* (*Duke*) (1749), 1 Ves. Sen. 202; *Arcot* (*Nabob*) v. *East India Co.* (1791), 3 Bro. C. C. 291; *London Corporation* v. *Cox* (1867), L. R. 2 H. L. 239, *per* WILLES, J., at p. 260; *R.* v. *Johnson* (1805), 6 East, 583; and see title PLEADING.

(*h*) *Read* v. *Pope* (1834), 1 Cr. M. & R. 302; *Kemp* v. *Clark* (1847), 12 Q. B. 647; *Cook* v. *M'Pherson* (1845), 8 Q. B. 1030; *Wadock* v. *Cooper* (1754), 2 Wils. 16; *Trevor* v. *Wall* (1786), 1 Term Rep. 151. As to the jurisdiction of county courts, see that title, Vol. VIII., p. 428.

(*i*) *Doulson* v. *Matthews* (1792), 4 Term Rep. 503.

(*j*) See title JUDGMENTS AND ORDERS.

(*k*) *Per* WILLES, J., in *London Corporation* v. *Cox* (1867), L. R. 2 H. L. 239, at p. 262.

(*l*) *Moravia* v. *Sloper* (1737), Willes, 30; *Carratt* v. *Morley* (1841), 1 Q. B. 18; *Andrews* v. *Marris* (1841), 1 Q. B. 3; *Houlden* v. *Smith* (1850), 14 Q. B. 841; *per* WILLES, J., in *London Corporation* v. *Cox*, *supra*, at p. 263; see, as to county courts, that title, Vol. VIII., p. 426.

The jurisdiction of an inferior court is not lost by mere non-user (*m*).

Remedy for excess of jurisdiction.

8. If a court exceeds its jurisdiction the aggrieved party, or even a stranger, may apply to the King's Bench Division to exercise its ancient right of either prohibiting the judge of the inferior court from proceeding further in the matter, or, if judgment has been given, of bringing up the record by *certiorari* in order that it may be quashed (*n*).

Appeal.

9. At common law proceedings in error lay from any inferior court of record of civil jurisdiction to the King's Bench or Common Pleas, and now in all cases where the procedure by way of appeal from such a court is not regulated by some special statute an appeal can be brought to the King's Bench Division by notice of motion (*o*).

SECT. 2.—*The Jurisdiction of Courts.*

SUB-SECT. 1.—*In General.*

Meaning of jurisdiction.

10. By jurisdiction (*p*) is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted (*q*), and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited; a limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance (*r*), or as to the area over which the jurisdiction shall extend (*s*), or may partake of both these characteristics.

Consent and waiver.

11. Where by reason of any such limitation a court is without jurisdiction to entertain any particular action or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court (*t*), nor can consent give a court jurisdiction

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(*m*) *A.-G. of Isle of Man* v. *Cowley* (1859), 12 Moo. P. C. C. 27; *R.* v. *Havering-atte-Bower* (1822), 5 B. & Ald. 691. But as to loss of franchise of frankpledge, see p. 215, *post;* and title COPYHOLDS, Vol. VIII., pp. 11, 12.

(*n*) For these proceedings, see title CROWN PRACTICE.

(*o*) *Darlow* v. *Shuttleworth*, [1902] 1 K. B. 721; see R. S. C., Ord. 59, rr. 10—17.

(*p*) "Jurisdiction est un dignity q̄ un home ad per un povoir de fair Justice en causes de complaint fait devant luy." "Jurisdiction is a dignity which a man hath by a power to do Justice in causes of complaint made before him" (Termes de la Ley, *sub voce* Jurisdiction). "There are three sorts of Inferior Jurisdictions: the first whereof is Tenere Placita which is the lowest, and the Party may either sue there or in the King's Courts (*i.e*, the High Court); the second is Conusance of Pleas; and by this a right is vested in the Lord of the Franchise to hold Pleas; and he is the only person who can take advantage of it, by claiming his Franchise; the third sort is an Exempt Jurisdiction, as where the King grants to some City that the inhabitants shall be sued within their City and not elsewhere. Though there is no Jurisdiction that can withstand a Certiorari to the Superior Courts. *Crosse* v. *Smith* (1703), 3 Salk. 79, 80" (Jacob's Law Dictionary, *sub voce* Jurisdiction).

(*q*) See p. 17, *post*, for the creation of courts.

(*r*) See p. 14, *post.*

(*s*) See p. 16, *post.*

(*t*) *Green* v. *Rutherforth* (1750), 1 Ves. Sen. 462, 471; *Penn* v. *Baltimore* (*Lord*) (1750), 1 Ves. Sen. 444, 446; *Jones* v. *Owen* (1848), 5 Dow. & L. 669; *Lawrence* v. *Wilcock* (1840), 11 Ad. & El. 941; *Wellesley* (*Lord*) v *Withers* (1855), 4 E. & B.

SECT. 2. The Jurisdiction of Courts.

if a condition which goes to the jurisdiction has not been performed or fulfilled (*a*). But where the court has jurisdiction over the particular subject-matter of the action or the particular parties, and the only objection is whether, under the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case, or a defendant by appearing without protest or by taking any steps in the action may waive his right to object to the court taking cognisance of the proceedings (*b*). No appearance or answer, however, can give a jurisdiction to a limited court (*c*), nor can such a court give itself jurisdiction by finding facts (*d*). Where a limited court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing (*e*); jurisdiction must be acquired before the judgment is given (*f*).

Prohibition.

12. All lawful jurisdiction is derived from and must be traced to the royal authority (*g*). Any exercise of unauthorised jurisdiction is a usurpation of the royal prerogative, which is unwarranted by law and may be restrained by prohibition, which is, in short, a process for preventing inferior courts from intermeddling with or executing anything beyond their jurisdiction (*g*). In a prohibition for want of jurisdiction the only question is whether the court below has or has not jurisdiction, and immediately the superior court is satisfied that the inferior court has exceeded its jurisdiction, the writ must issue, whether the application be made by a party or by a stranger, and that no matter what stage the proceedings below have reached (*h*).

SUB-SECT. 2—*As to Subject-matter.*

Original and appellate jurisdiction.

13. The jurisdiction of courts is either original or appellate, and in either case may be unlimited or limited as to the nature of the actions and matters of which the particular court has cognisance. The Judicial Committee of the Privy Council appears to be the only court in England which has jurisdiction in every kind of action, as its appellate jurisdiction is not only co-extensive as regards classes of actions with that of the House of Lords and that of the Supreme Court of Judicature, but also includes jurisdiction in criminal matters, and it is the ultimate Court of Appeal from all civil courts from which appeal does not lie to the Supreme Court of Judicature or to the House of Lords (*i*).

750; *Foster* v. *Usherwood* (1877), 3 Ex. D. 1, C. A.; *Re Aylmer, Ex parte Bischoffsheim* (1887), 20 Q. B. D. 258, 262; *R.* v. *Shropshire County Court Judge* (1887), 20 Q. B. D. 242, 248; *British Wagon Co.* v. *Gray*, [1896] 1 Q. B. 35, C. A.

(*a*) *R.* v. *Essex Justices*, [1895] 1 Q. B. 38, C. A. See as to consent in county courts, title COUNTY COURTS, Vol. VIII., pp. 435, 539, 580.

(*b*) See, *e.g.*, *Fry* v. *Moore* (1889), 23 Q. B. D. 395, C. A.; *Oulton* v. *Radcliffe* (1874), L. R. 9 C. P. 189.

(*c*) *Green* v. *Rutherforth* (1750), 1 Ves. Sen. 462.

(*d*) *Rorke* v. *Errington* (1859), 7 H. L. Cas. 617, 632.

(*e*) *A.-G.* v. *Hotham* (*Lord*) (1827), 3 Russ. 415.

(*f*) *Thompson* v. *Shiel* (1840), 3 I. Eq. R. 135.

(*g*) See *per* WILLES, J., in *London Corporation* v. *Cox* (1867), L. R. 2 H. L. 239, at p. 254.

(*h*) *Ibid.*, at pp. 278, 279, 280, 282. As to Prohibition generally, see title CROWN PRACTICE; and as to pleading to the jurisdiction, see title PLEADING.

(*i*) See p. 28, *post*.

In the case of all other courts there is some limitation, be it greater or less, of the classes of actions or matters of which they have cognisance. This subject of the extent of the jurisdiction of particular courts is dealt with under each particular court (*k*).

Remedy for exceeding jurisdiction.

14. When a court exceeds its jurisdiction by maintaining an action or matter of which it has not cognisance by law, the Supreme Court has power to issue a writ of prohibition to restrain such excessive exercise of jurisdiction. It appears that this jurisdiction extends to cases in which the Judicial Committee of the Privy Council exceeds its jurisdiction (*l*). An excessive exercise of jurisdiction in the case of the High Court itself can be challenged by appeal to the Court of Appeal; and in the case of the Court of Appeal, by appeal to the House of Lords. The House of Lords, however, is the supreme tribunal, and as such is the judge of the extent of its own jurisdiction, and there is no means of questioning or challenging any exercise of jurisdiction on the part of that court.

Matrimonial causes.

15. As regards proceedings in divorce and other matrimonial causes, the jurisdiction of the English courts depends, in the case of divorce, on the domicil of the parties (*i.e.*, of the husband, as the wife's domicil is that of the husband) being in England at the time of the commencement of the suit (*m*). In suits for judicial separation the rule as to domicil is relaxed in favour of the wife, by allowing her to sue when the matrimonial residence is in England when proceedings are commenced (*n*). In nullity suits an English court has jurisdiction, whatever the domicil or matrimonial residence may be, provided that the marriage took place in this country (*o*). In suits for restitution of conjugal rights it would seem that residence by both parties at the time proceedings are commenced is sufficient to give jurisdiction to the English courts (*p*).

Wills.

16. As to testamentary matters, the English courts have jurisdiction if the deceased was domiciled in England at the date of his death (*q*), but not, as a general rule, if the deceased

(*k*) See *post*, *passim*.

(*l*) *Ex parte Smyth* (1835), 3 Ad. & El. 719. In this case on an application to issue a writ of prohibition to the Judicial Committee, LITTLEDALE, J., in delivering the judgment of the court, said: "Whether they are right in so decreeing or not is a question of practice, not of jurisdiction. The temporal courts cannot take notice of the practice of the ecclesiastical courts, or entertain a question whether, in any particular cause admitted to be of ecclesiastical cognizance, the practice has been regular. The only instances in which the temporal courts can interfere by way of prohibiting any particular proceeding in an ecclesiastical suit, are those in which something is done contrary to the general law of the land, or manifestly out of the jurisdiction of the court" (*ibid.*, at p. 724). See title CROWN PRACTICE.

(*m*) See title CONFLICT OF LAWS, Vol. VI., p. 262.

(*n*) *Christian* v. *Christian* (1897), 78 L. T. 86; and see title CONFLICT OF LAWS, Vol. VI., p. 264.

(*o*) *Roberts* v. *Brennan*, [1902] P. 143, at p. 144; and see title CONFLICT OF LAWS, Vol. VI., p. 265.

(*p*) See title CONFLICT OF LAWS, Vol. VI., p. 265.

(*q*) *Spratt* v. *Harris* (1833), 4 Hag. 405; *Re Winter* (1861), 30 L. J. (P. M. & A.) 56.

SECT. 2. The Jurisdiction of Courts.

was not so domiciled, unless he leaves personal property within this country (*a*).

SUB-SECT. 3.—*As to Area.*

Extent of jurisdiction.

17. The authority of the King extends over all his subjects wherever they may be, and also over all foreigners who are within the realm. The jurisdiction of English courts of law, however, is limited, first, by the stipulations contained in the enactments by which the kingdoms of Scotland and Ireland were incorporated in the United Kingdom; secondly, by the charters of justice, letters patent, and statutes affecting particular colonies; and, thirdly, by the consideration that no English court will decide any question where it has not the power to enforce its decree.

The jurisdiction of each particular court is that which the King has delegated to it, and this delegation has been complete, for the King has distributed his whole power of judicature to divers courts of justice (*b*).

Real actions.

18. As English courts have no power to enforce their decisions in questions as to the title to land or trespass to land outside the realm, they will not entertain actions to try such matters (*c*).

Offences overseas.

19. Again, ordinary offences committed by subjects of the King in countries outside his dominions, or on the high seas on foreign ships, cannot be said to be against the King's peace or against his crown and dignity, and therefore by the common law, and apart from statutes, English courts have no jurisdiction in such cases (*d*).

Personal actions.

20. Personal actions of a transitory nature (*e*), on the other hand, whether in contract or in tort, are within the jurisdiction of

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(*a*) *Evans* v. *Burrell* (1859), 28 L. J. (P. & M.) 82; and see title CONFLICT OF LAWS, Vol. VI., pp. 218 *et seq.*

(*b*) 4 Co. Inst. 70. "The King hath committed all his power judiciall, some in one court and some in another, so as if any would render himself to the judgment of the King in such case where the King hath committed all his power judiciall to others, such a render should be to no effect (Y. B. 8 H. 4, fo. 19). The King doth judge by his judges (the King having distributed his power judiciall to several courts), and the King hath wholly left matters of judicature according to his lawes to his judges (Y. B. 8 H. 6, fo. 20)" (*ibid.*, 71).

(*c*) *British South Africa Co.* v. *Companhia de Moçambique*, [1893] A. C. 602. The Probate, Divorce and Admiralty Division of the High Court will not grant an injunction restraining a foreigner, who has had an English domicil, but has gone abroad for the purpose of obtaining a foreign domicil, from taking divorce proceedings in the court of the foreign country where he has acquired such domicil (*Vardopulo* v. *Vardopulo* (1909), 25 T. L. R. 518, C. A.; and see *Hyman* v. *Helm* (1883), 24 Ch. D. 531, *per* COTTON, L.J., at p. 536.

(*d*) Pollock and Maitland, History of English Law, Vol. II., p. 461.

(*e*) *Doulson* v. *Matthews* (1792), 4 Term Rep. 503. "It is now too late for us to inquire whether it were wise or politic to make a distinction between transitory and local actions (see title ACTION, Vol. I., p. 50); it is sufficient for the courts that the law has settled the distinction, and that an action *quare clausum fregit* is local. We may try actions here which are in their nature transitory, though arising out of a transaction abroad; but not such as are in their nature local" (*per* BULLER, J., *ibid.*, p. 504); *Phillips* v. *Eyre* (1870), L. R. 6 Q. B. 1, Ex. Ch. "Our courts are said to be more open to admit actions founded upon foreign transactions than those of any other European country; but there are restrictions in respect of locality, which exclude some foreign causes of action altogether, namely those which would be local if they arose in England, such as trespass to land; and even with respect to those not falling within that

English courts, even though the cause of action arose abroad, and even an action in respect of an assault committed by a foreigner on a foreigner abroad may be tried by the courts of this country if process can be properly served (*f*).

Offences in territorial waters.

21. By the common law there was no power to try offences committed by foreigners on board foreign ships below low-water mark, though within the territorial waters of His Majesty's dominions (*g*), but in 1878 such offences were brought within the jurisdiction (*h*).

Limited jurisdiction.

22. All English courts, however, have not the whole of this jurisdiction. Thus, the courts of the counties palatine, county courts, and borough and other local civil courts, have only had a jurisdiction limited in area conferred upon them, and the jurisdiction of such courts is strictly limited to the precinct defined by the statute or royal grant by which they are created or regulated (*i*).

Service out of the jurisdiction.

23. In the case of such English courts as do not possess jurisdiction extending over the whole of England, but only jurisdiction limited to some particular precinct, there is by the common law no power to order the service of the writ of summons outside the area of jurisdiction (*a*), but this power has been conferred on many courts by statute or by statutory Rules and Orders (*b*).

SECT. 3.—*Creation of Courts.*

How courts are created.

24. Courts are created by the authority of the King as the fountain of justice (*c*). This authority is exercised either by

description, our courts do not undertake universal jurisdiction" (*per* WILLES, J., *ibid.*, at p. 28).

(*f*) Down to Lord Mansfield's time it was doubted whether a tort committed abroad could be tried here, but in *Mostyn* v. *Fabrigas* (1774), 1 Smith, L. C., 11th ed., 591, it was decided that the jurisdiction of the English courts extends so far; see *British South Africa Co.* v. *Companhia de Moçambique*, [1893] A. C. 602, at p. 614.

As to foreign sovereigns and governments, see titles ACTION, Vol. I., p. 18; CONFLICT OF LAWS, Vol. VI., p. 232; and as to diplomatic officers, see titles ACTION, Vol. I., p. 19; CONSTITUTIONAL LAW, Vol. VI., p. 428. As to both, see also title CRIMINAL LAW AND PROCEDURE, p. 244, *post*.

In 1827 the Law Officers of the Crown advised that neither the Diplomatic Privileges Act, 1708 (7 Ann. c. 12), nor any construction which could properly be placed upon it, extended so far as to protect the mere servants of ambassadors from arrest on criminal charges. Lord Dudley, who was then Secretary of State for Foreign Affairs, informed the Government of the United States that when a servant of a foreign minister was charged with a criminal offence the magistrate ordering the arrest would take the proper measures for apprising the minister, either by personal communication or through the Foreign Office, of the fact of a warrant having been issued before any attempt would be made to execute it, in order that the convenience of the minister might be consulted as to the time and manner of execution of the warrant.

(*g*) *R.* v. *Keyn* (1876), 2 Ex. D. 63, C. C. R.

(*h*) Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73).

(*i*) See as to the jurisdiction of these courts, *post*, under each particular court.

(*a*) As to service out of the jurisdiction generally, see p. 57, *post*.

(*b*) As to service out of jurisdiction in county courts, see title COUNTY COURTS, Vol. VIII., pp. 472, 477; and in other courts of limited jurisdiction, see under the several particular courts, *post*.

(*c*) Bac. Abr. tit. Prerogative (D) (1): "All jurisdiction exercised in these Kingdoms, that are in obedience to our King, is derived from the Crown; and

SECT. 3. Creation of Courts.

statute (*d*), charter (*e*), letters patent (*f*), or Order in Council (*g*). In some cases a court is held by prescription, as having existed from time immemorial, with the implication that there was at some time a grant of the court by the King, which has been lost (*h*).

An Act of Parliament is necessary to create a court which does not proceed according to the common law (*i*). The King, however, may grant a court with jurisdiction to hear and determine actions according to the common law, either limited or unlimited (*k*). The King may also grant the franchise of cognisance of pleas, by which the grantee obtains cognisance of all pleas within the limits of the grant, which are commenced in other courts than that of the grantee (*l*). The King may also grant an exempt jurisdiction, whereby the inhabitants of a city or borough may not be sued except within that city or borough (*m*).

The proposition that an Act of Parliament is necessary to create a court the procedure of which is not according to the common law is subject to the qualification that it does not apply to a Crown colony, properly so called, that is, a colony which has not received a grant of representative government. In the case of such a colony a bishopric may be constituted and ecclesiastical jurisdiction conferred by the sole authority of the Crown, yet letters patent granting such jurisdiction will not have any effect or operation in a colony possessed of an independent legislature (*n*).

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the laws, whether of a temporal, ecclesiastical, or military nature, are called his laws; and it is his prerogative to take care of the due execution of them. Hence all judges must derive their authority from the Crown, by some commission warranted by law; and must exercise it in a lawful manner, and without any the least deviation from the known and stated forms" (*ibid.*). See also title CONSTITUTIONAL LAW, Vol. VI., p. 402.

(*d*) As in the case of the former Court of Common Pleas by Magna Carta, and in the case of the Supreme Court of Judicature by the Judicature Act, 1873 (36 & 37 Vict. c. 66).

(*e*) As in the case of the High Courts in India (Statutory Rules and Orders Revised, Vol. VI., India, pp. 3, 16, 28, 41); and in the case of the Civil Courts of Record granted to boroughs in England, see pp. 138 *et seq.*, *post.*

(*f*) For instance the Newfoundland Act, 1824 (5 Geo. 4, c. 67), gives power to His Majesty, by his Charter or Letters Patent under the Great Seal, to institute a Superior Court of Judicature in Newfoundland. The court, however, was instituted by charter (Statutory Rules and Orders Revised, Vol. IX., Newfoundland, p. 5).

(*g*) As in the case of the Cyprus Courts of Justice Order, 1882 (Statutory Rules and Orders Revised, Vol. V., Foreign Jurisdiction, p. 341).

(*h*) As in the case of the Court of Arundel, see p. 139, *post.*

(*i*) *Dodwell* v. *Oxford University* (1680), 2 Vent. 33. "No court other than such as proceed according to law can be, unless by prescription or Act of Parliament," *per curiam*, *ibid.*, p. 34; *Re Natal* (*Bishop*) (1864), 3 Moo. P. C. C. (N. S.) 115, at p. 152.

(*k*) 3 Com. Dig. tit. Courts (P, 1), p. 345.

(*l*) *Hampton* v. *Phillips* (1627), Palm. 456; *Castle* v. *Lichfield* (1669), Hard. 505; *Ginnett* v. *Whittingham* (1886), 16 Q. B. D. 761.

(*m*) *Crosse* v. *Smith* (1703), 3 Salk. 79.

(*n*) *Re Natal* (*Bishop*), *supra*, at pp. 151, 152. See, generally, title DEPENDENCIES AND COLONIES.

Part II.—The High Court of Parliament.

SECT. 1.—*The House of Lords.*

SUB-SECT. 1.—*Constitution.*

Constitution of House of Lords.

25. The House of Lords consists of (1) the peers of the realm—that is to say, of the peers of England, the peers of Great Britain, and the peers of the United Kingdom, sixteen representative peers of Scotland (elected for each Parliament), and twenty-eight representative peers of Ireland (elected for life); and (2) the lords spiritual—that is, the two Archbishops, the Bishops of London, Durham and Winchester, and the other English bishops except the eight junior bishops. The Bishop of Sodor and Man has a seat but no vote.

SUB-SECT. 2.—*Jurisdiction.*

(1) *Original Jurisdiction.*

Original jurisdiction.

26. The jurisdiction of the House of Lords is original and appellate. The original jurisdiction arises in the following cases:—

(a) *Trial of a Peer or Peeress for Treason, Felony, or Misprision.*

Treason, felony, or misprision.

27. Where it is alleged that a temporal peer or peeress (*o*), whether of the United Kingdom or Ireland, has committed treason or a felony, or misprision of either, then, if Parliament be sitting, the House of Lords has jurisdiction to try the accused. In cases of misdemeanour a peer is triable by a jury as other persons are (*p*).

A peer is appointed, on the address of the Lords, as Lord High Steward *pro hâc vice* (*q*) to preside over the court, but he has not judicial functions beyond his fellow peers. The statutory provision as to summoning all peers (*r*) applies to trials in the House of Lords as well as to trials in the court of the Lord High Steward (*s*).

(b) *Impeachment.*

Impeachment.

28. The original jurisdiction of the House of Lords also arises on an impeachment of any subject, either peer or commoner, by the House of Commons (*t*). This is the most exalted form of criminal

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(*o*) Bishops have not the privilege of trial by the House of Lords. See as to treason, titles CONSTITUTIONAL LAW, Vol. VI., p. 345; CRIMINAL LAW AND PROCEDURE, p. 450, *post*.

(*p*) *R.* v. *Vaux* (*Lord*) (1612), 1 Bulst. 197.

(*q*) See Journals of the House of Lords, Vol. CXXXIII., 1901, July 18. The Lord High Steward (Seneschallus Angliæ). This office is very ancient, and existed before the conquest "*et sciendum est quod ejus officium est supervidere, et regulare sub rege, et immediate post regem totum regnum Angliæ, et omnes ministros legum infra idem regnum temporibus pacis et guerrarum*" (4 Co. Inst. 58). This is, however, not necessary for the constitution of the court (see Fost. 143). Sometimes no Lord High Steward is appointed; in such a case the Lord Chancellor presides in his capacity of Speaker of the House of Lords.

(*r*) Treason Act, 1695 (7 & 8 Will. 3, c. 3), s. 11.

(*s*) *Trial of the Earl of Kilmarnock* (1746), 18 State Tr. 442; and see p. 26, *post*.

(*t*) The latest instances of an impeachment are the cases of Warren Hastings

SECT. 1. The House of Lords.

procedure, and has this peculiarity, that, while in other cases a pardon may be pleaded in bar, a pardon cannot be pleaded in bar of an impeachment by the House of Commons (*u*). The Crown may, however, pardon the offender after conviction. If the accused is a peer, a Lord High Steward is appointed, for the occasion, to preside, while if a commoner is on his trial either the Lord Chancellor or the Speaker of the House of Commons presides.

(c) *Bills of Attainder.*

Attainder.

29. The procedure against accused persons by Bill of Attainder (*x*) or Bill of Pains and Penalties is legislative in form, the Bill going through all the stages of other public and general Bills, but the accused is entitled to be defended by counsel and to call witnesses before both Houses. The concurrence of the Crown, testified by the royal assent to the Bill, is necessary in this manner of proceeding. The Bill is usually introduced in the House of Lords, but in the case of Bishop Atterbury it was introduced in the House of Commons.

(d) *Irish Divorce Bills.*

Irish Divorce Bills.

30. Another form of original jurisdiction in the House of Lords is in the case of an Irish Divorce Bill (*y*). The courts in Ireland having only power to grant a divorce *à mensa et thoro*, an Act of Parliament is necessary to dissolve a marriage of persons having an Irish domicil. Divorce Bills are always introduced in the House of Lords. The standing orders require the Bill to contain a clause prohibiting the marriage of the respondent with any person with whom adultery is alleged. This clause is always struck out in committee (*z*). A report of the previous proceedings is presented to the House. The Speaker of either House may issue a warrant for the examination of witnesses in India (*a*). If this is done, the proceedings are not interrupted by a prorogation or dissolution of Parliament. Divorce Bills are committed to a committee of the whole House. Counsel are heard and witnesses examined on the second reading of the Bill.

(e) *Claims to Peerages and Offices of Honour.*

Peerage claims.

31. The House of Lords also, by a committee of privileges, exercises jurisdiction over claims to peerages. Its jurisdiction in

in 1788, and of Lord Melville in 1805. As to the extent of the jurisdiction, see Lord Rochester's Report of Proceedings of Impeachments (Hatsell, Precedents of Parliament, Vol. IV., Appendix No. 10, p. 397).

(*u*) Act of Settlement, 1700 (12 & 13 Will. 3, c. 2), s. 3.

(*x*) A Bill to declare a person attainted—that is to say, under the stain or corruption of blood formerly incurred by a criminal condemned for treason or felony.

(*y*) Before the passing of the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), marriages in England were not subject to dissolution by the Ecclesiastical Courts, which had jurisdiction in matrimonial causes, and the only manner of dissolving an English marriage was by Divorce Bill, in the same manner as is now necessary in the case of Irish marriages. Since the passing of the Indian Divorce Act (Act No. IV. of 1869) a Bill is no longer necessary in order to dissolve an Indian marriage.

(*z*) Standing Orders of the House of Lords, No. 176.

(*a*) Divorce Bills Evidence Act, 1820 (1 Geo. 4, c. 101). The Lord Chancellor is Speaker of the House of Lords, see title CONSTITUTIONAL LAW, Vol. VII., p. 58.

this respect arises on reference from the Crown (*b*), and the decision of the committee is by way of resolution. The Crown, however, may act on the report of the Attorney-General without referring peerage claims to the House of Lords (*c*). Since the time of Charles II. claims to peerages, where there is any doubt, have been uniformly referred to the House of Lords, and the decision there has been acted on by the Crown (*d*).

In peerage cases there are two questions, one of law, that of the existence and nature of the dignity; the other of fact, that of the descent of the claimant. A decision on the first point, that of law, is apparently not conclusive as to persons other than the particular claimant and those claiming under him (*e*). A decision on the second, that of fact, is not conclusive, at all events against other claimants.

(f) *Controverted Elections of Representative Peers of Scotland or Ireland.*

Contested elections.

32. The House of Lords has jurisdiction to decide questions as to contested elections of the sixteen representatives of the peerage of Scotland (*f*) and of the twenty-eight representatives of the peerage of Ireland (*g*), and also questions of claims to vote at such elections. The procedure is as in peerage claims (*h*).

(g) *Contempt or Breach of Privileges of the House.*

Contempt.

33. The House of Lords also exercises a jurisdiction over persons guilty of contempt, or breach of the privileges (*i*) of the House. In such a case the person complained of is ordered to attend the House. The House has power to impose a fine, as well as to imprison an offender. The imprisonment (*k*) may be for a fixed time, and may extend beyond the termination of the session. If the term of the imprisonment is not fixed, it remains in doubt

(*b*) Petitions were originally heard before the King in Parliament (Rot. Parl. v. 441; Rot. Parl. 3 Hen. 6; Fifth Report of the Committee on the Dignity of a Peer of the Realm, 198, 227). In 39 Eliz. Thomas, Lord de la Warr, petitioned the Queen as to his precedence in Parliament. The Queen referred the question to the House of Lords, and the House to a committee (*De la Warr's (Lord) Case* (1597), 11 Co. Rep. 1).

(*c*) The last time the Crown determined a peerage claim without reference to the House of Lords was in the case of the claim of Mr. Mildmay to the barony of Fitzwalter. This claim was originally referred to the House of Lords, but Parliament was prorogued before a decision was come to; the claim was then heard before the Privy Council, who decided in favour of the claimant 19th January, 1669-70. The writ of summons issued 10th February, 1669-70.

(*d*) See Third Report of the Committee on the Dignity of a Peer of the Realm, p. 52. See also title PEERAGES AND OTHER DIGNITIES.

(*e*) Cruise on Dignities, p. 320.

(*f*) Union with Scotland Act, 1706 (5 & 6 Ann. c. 8); Scottish Representative Peers Act, 1707 (6 Ann. c. 78) (c. 23, Ruff.); Representative Peers (Scotland) Act, 1847 (10 & 11 Vict. c. 52).

(*g*) Union with Ireland Act, 1800 (39 & 40 Geo. 3, c. 67), art. 4.

(*h*) See *supra*.

(*i*) Sir Erskine May divides breaches of privilege into four classes: (1) disobedience to general orders or rules of the House; (2) disobedience to particular orders; (3) indignities offered to the character or proceedings of Parliament; (4) assaults upon or insults to members, or reflections upon their character or conduct in Parliament, or interference with the officers of the House in discharge of their duty.

(*k*) The imprisonment is by way of attachment.

SECT. 1. The House of Lords.

whether the prisoner can be discharged on *habeas corpus* after a prorogation (*l*).

(2) *Appellate Jurisdiction.*

Appellate jurisdiction.

34. An appeal to the House of Lords lies (*m*) from any judgment or order of the Court of Appeal in England, or of any court in Scotland or Ireland from which error or appeal lay to the House of Lords by common law or statute (*n*). An appeal also lies from a decision of the Court of Criminal Appeal to the House of Lords, when the Attorney-General certifies that a decision of that court involves a point of law of exceptional public interest, and that it is desirable that a further appeal should be brought (*o*).

Sittings.

35. If Parliament is prorogued, the House of Lords may by order appoint days for the hearing of appeals; and if Parliament is dissolved, His Majesty may by writing under the sign manual authorise sittings for the hearing of appeals during the dissolution of Parliament (*p*).

SUB-SECT. 2.—*Judges.*

Constitution of court.

36. In trials of peers before the House of Lords and on impeachments, all the members of the House (*a*) are equally judges of law and of fact; and though a High Steward may be appointed to preside, he has merely to regulate the procedure, and is a judge of law to no greater extent than any other peer. He has a vote in the same manner as other peers. The High Steward has the title of "His Grace" (*b*).

In the case of proceedings before the Committee of Privileges, the members of the committee are judges of law and of fact (*c*).

In the exercise of the appellate jurisdiction of the House of Lords, no appeal can be heard (*d*) unless there be present three of

(*l*) See May, Parliamentary Practice, 11th ed., pp. 91, 92.

(*m*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59). There is no appeal as to costs only (*Caledonian Rail. Co.* v. *Barrie*, [1903] A. C. 123); or as to small errors in accounts (*The Marpessa*, [1907] A. C. 241); as to appeals generally, see Yearly Supreme Court Practice, 1909, p. 1735.

(*n*) That is to say, appeals to the House of Lords now lie from the Court of Session, the Commission of Teinds, and the Court of Exchequer (Exchequer Court (Scotland) Act, 1707 (6 Ann. c. 53), s. 20), in Scotland, and the Supreme Court of Ireland.

(*o*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 1 (6). See title CRIMINAL LAW AND PROCEDURE, p. 433, *post*.

(*p*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), ss. 8, 9. The procedure of the House of Lords is regulated by the Standing Orders of the House, and is dealt with under title PARLIAMENT.

(*a*) The bishops have a right to be present at criminal trials by the House of Lords, but by the canon they are prohibited from voting in capital cases. They therefore ask leave to be absent from the judgment, and this being granted, they withdraw under protest, "saving to themselves and their successors all such rights in judicature as they have by law, and by right ought to have." For full form of this protest, see Lords' Journal, Vol. CXXXIII., 18th July, 1901. By the Constitutions of Clarendon it was declared that bishops ought to take part in trials in the King's Court until it comes to a question of life or limb. In the case of Bills of Attainder, the procedure being legislative, bishops can take full part in the proceedings.

(*b*) Campbell, Lives of the Chancellors, Vol. III., p. 557, note.

(*c*) May, Parliamentary Practice, 11th ed., p. 88.

(*d*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 5.

the following persons: the Lord Chancellor, the Lords of Appeal in Ordinary, and such peers of Parliament as have held high judicial office, that is to say, as have been Lord Chancellors, paid judges of the Judicial Committee of the Privy Council, or judges of the Supreme Court of England or of Ireland, or of the Court of Session (*e*). The Lord Chancellor, if present, presides over the judicial deliberations of the House in appeals (*f*).

Lords of Appeal.

37. The Lords of Appeal in Ordinary are appointed by letters patent (*g*). The qualification is either to have held high judicial office for two years, or to have been for fifteen years a practising barrister in England or Ireland or a practising advocate in Scotland. The tenure is during good behaviour (*h*). There are now four Lords of Appeal in Ordinary (*i*). Each receives a salary of £6,000 a year (*k*), and after service, including previous service in high judicial office, of fifteen years, may have a pension granted to him of £3,750 a year (*l*). A Lord of Appeal in Ordinary is entitled to sit and vote as a member of the House of Lords during his life (*m*).

Lay peers.

38. The lay peers have, strictly speaking, the same right to vote on judicial questions as they have on other questions. This right, however, has fallen into disuse, and since 1883 no lay peer has attempted to exercise it (*n*).

Attendance of the judges.

39. The House of Lords has power in all cases to call on the judges to attend and assist them in their deliberations by giving their opinion on any points of law which may arise in any exercise of the judicial functions of the House. This is frequently done in the case of peerage claims. The House, however, need not agree with the advice of the judges. The Attorney-General and the Solicitor-General may also be called upon to advise the House, and they, like the judges, are summoned as assistants at the opening of each Parliament. Such of the Privy Council as are called by writ from the Crown to attend may also be called upon to advise the House (*o*).

SUB-SECT. 3.—*Officers.*

Officers of House of Lords.

40. The officers of the House of Lords when acting in a judicial capacity are the Clerk of the Parliaments, the Gentleman Usher of

(*e*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 25; Appellate Jurisdiction Act, 1887 (50 & 51 Vict. c. 70), s. 5. A decision of the House of Lords on a question of law is binding upon the House (*London County Council* v. *London Tramways Co.*, [1898] A. C. 375).

(*f*) See title CONSTITUTIONAL LAW, Vol. VII., p. 55, for the office, duties, and privileges of the Lord Chancellor.

(*g*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 6.

(*h*) *Ibid.*

(*i*) Two of these have been appointed under the provisions of s. 14 of the Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), on the extinction of the offices of the paid judges of the Judicial Committee.

(*k*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 6.

(*l*) *Ibid.*, s. 7.

(*m*) Appellate Jurisdiction Act, 1887 (50 & 51 Vict. c. 70), s. 2.

(*n*) This was in the case of *Bradlaugh* v. *Clarke* (1883), 8 App. Cas. 354, where Lord DENMAN, a lay peer, gave his judgment, which was in agreement with that of Lord BLACKBURN, who dissented from the rest of the law lords. See May, Parliamentary Practice, 11th ed., p. 360.

(*o*) Lords' Standing Orders, 6, 7.

SECT. 1. The House of Lords.

the Black Rod, the Clerk Assistant, the Reading Clerk, and the Sergeant-at-arms.

Clerk of the Parliaments.

The Clerk of the Parliaments (*p*) and the Gentleman Usher of the Black Rod are appointed by the Crown under letters patent. The Sergeant-at-arms is also appointed by the Crown. The Clerk Assistant and the Reading Clerk are appointed by the Lord Chancellor (*q*).

The duties of the Clerk of the Parliaments are to make records of all things transacted by the House. The two clerks attend and take minutes of all judgments and orders.

Black Rod.

The Gentleman Usher of the Black Rod executes warrants for the commitment of persons whose imprisonment is ordered by the House and assists at the introduction of peers and other ceremonies.

Sergeant-at-arms.

The Sergeant-at-arms attends the Lord Chancellor with the mace; he also executes orders of attachment on persons who are not in London or Westminster.

SECT. 2.—*The House of Commons.*

SUB-SECT. 1.—*Jurisdiction.*

Jurisdiction of House of Commons.

41. The jurisdiction of the House of Commons appears to be confined to Bills of Attainder and of Pains and Penalties, Divorce Bills, and proceedings against persons for breach of privilege or for contempt. The proceedings before the committee on a private Bill in respect to the proving of the preamble are also an exercise of a *quasi*-judicial jurisdiction (*a*).

Procedure.

42. In the case of Bills of Attainder and of Pains and Penalties witnesses are heard and the accused is entitled to be represented by counsel on the committee stage (*b*). In the case of Divorce Bills, after second reading the Bill is referred to the Select Committee (*c*) on Divorce Bills (*d*), which committee requires evidence to be given before them that an action for divorce has been brought before a competent court and judgment obtained therein (*e*). When the petitioner has attended the House of Lords on the second reading, the committee are to require him to attend before them to answer any questions they may think fit to put to him (*f*).

(*p*) On entering his office the Clerk of the Parliaments makes a declaration under the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), to make true entries and records of what is done in Parliament, and to keep such things secret and not to disclose them before they are published, except to such as they ought to be disclosed to. The full text of the declaration will be found in Lords' Journal, Vol. LXXXVII., 25th June, 1855, p. 244.

(*q*) Clerk of Parliaments Act, 1824 (5 Geo. 4, c. 82), s. 3.

(*a*) Formerly the trial of election petitions was referred to a select committee, but the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 11, transferred this jurisdiction, and it is now exercised by judges of the High Court (see title ELECTIONS).

(*b*) See p. 20, *ante*.

(*c*) A select committee is one appointed by the House to consider any matters referred to it, or any Bill committed to it (May, Parliamentary Practice, 11th ed., p. 400).

(*d*) Standing Order 208 of the House of Commons.

(*e*) *Ibid.* 190.

(*f*) *Ibid.* 191.

In proceedings against persons for breach of the privileges of the House, the procedure is similar to that in the House of Lords, but the House of Commons only punishes the offender by imprisonment, and not by fine (*g*), and the imprisonment is not for a fixed period, but is during the pleasure of the House. A prorogation has the effect of entitling the offender to be immediately discharged. If this is not done, a writ of *habeas corpus* will issue (*h*).

SUB-SECT. 2.—*Officers.*

Officers of House of Commons.

43. The officers of the House of Commons are the Under-Clerk of the Parliaments to attend upon the Commons, usually called the Clerk of the House, the Clerk Assistant, the Second Clerk Assistant, and the Sergeant-at-arms.

Clerk of the House.

The Clerk of the House is appointed for life by the Crown by letters patent. His duties are to "make true entries, remembrances, and journals of all things done in the House" (*i*). He signs addresses, votes of thanks, and orders of the House; he has the custody of all records and documents, and is responsible for the conduct of business in the departments under his control; and he also assists the Speaker and advises members on questions of order and the proceedings of the House. On the election of a Speaker he puts the necessary questions, as he does on the adjournment of the House in the absence of the Speaker (*k*).

The Clerk Assistant and the Second Clerk Assistant are appointed by the Crown under the sign manual on the recommendation of the Speaker. Their duties are to take notes of all the proceedings and votes of the House, from which the Journal is prepared. They are removable only on the presentation to the Crown of an address by the House (*l*).

(*g*) The House of Commons has never punished a breach of privilege by fine since 1666 (May, Parliamentary Practice, 11th ed., pp. 91, 93).

(*h*) *Stockdale* v. *Hansard*, Parliamentary Papers, 1839 (283), p. 142. See also *Burdett* v. *Abbot* (1811), 14 East, 1: "The power of the House of Commons to commit for contempt stands upon the ground of reason and necessity independent of any positive authorities on the subject, but it is also made out by the evidence of usage and practice. . . . The resolution of the House that the plaintiff had been guilty of a breach of its privileges . . . and the order made for his commitment for that offence were in conformity to their power. . . . The warrant issued by the Speaker . . . was made in the due execution of their order" (*per* Lord ELLENBOROUGH, C.J., at p. 158); and *Bradlaugh* v. *Gossett* (1884), 12 Q. B. D. 271: "The House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned; and . . . even if that interpretation should be erroneous, this court has no power to interfere with it directly or indirectly" (*per* STEPHEN, J., at p. 280). In the case of a writ of *habeas corpus* being applied for the custom is now for the Sergeant-at-arms to make a return. The courts of law, however, have no jurisdiction to, and will not, inquire into the cause of commitment, nor admit the prisoner to bail (*Case of the Sheriff of Middlesex* (1840), 11 Ad. & El. 273). As to the powers of the House of Commons over members, see title PARLIAMENT.

(*i*) He makes a declaration under the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), to make true entries, remembrances, and journals of the things done and passed in the House of Commons.

(*k*) May, Parliamentary Practice, 11th ed., pp. 200, 201.

(*l*) House of Commons Offices Act, 1856 (19 & 20 Vict. c. 1).

SECT. 2. The House of Commons.

Sergeant-at-arms.

The Sergeant-at-arms is appointed by the Crown under a warrant to the Lord Chamberlain of the Household and letters patent. His duties are to arrest and to have the custody of persons ordered to be imprisoned for breach of privilege (*m*). He may be removed on an address from the House (*n*).

Part III.—Court of the Lord High Steward.

Trial of peers.

44. If a peer has to be tried for treason or felony when Parliament is not sitting, the trial is had before the Court of the Lord High Steward of England (*o*). In such a case a commission is issued appointing some peer Lord High Steward and requiring such peers as he shall summon by his precept to be attendant on him. In early days it became the custom to summon only a limited number of peers to the court, but in 1695 (*p*) it was enacted that all peers (*q*) having a right to sit and vote in Parliament must be summoned in the case of trials for treason or misprision of treason. In the case of a trial for felony this Act does not apply (*a*). No case of a trial before this court has occurred since the Revolution (1689) (*b*).

No general appointment to the office of the Lord High Steward has been made since the office merged in the Crown on the accession of Henry IV. on the 30th September, 1399. Appointments are, however, made *pro hâc vice* on the occasion of a coronation or the trial of a peer (*c*).

Procedure.

45. After indictment and the finding by a grand jury of a true bill (*d*), the procedure in the Court of the Lord High Steward is generally as in other criminal trials. The Lord High Steward is sole judge of law and practice. The verdict is by vote. Each lord tries in turn, beginning with the junior baron, giving his decision

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(*m*) The Sergeant-at-arms is justified in breaking open doors to effect an arrest (*Burdett* v. *Abbot* (1811), 14 East, 1); but he may not remain in the house, if the person who is to be arrested is absent, to await his return (*Howard* v. *Gossett* (1842), Car. & M. 380).

(*n*) May, Parliamentary Practice, 11th ed., p. 204.

(*o*) The first instance on record of the holding of this court was on the trial of John, Earl of Huntingdon, in 1400. See 3 Co. Inst. 28—30, and Y. B. (1399), Mich. 1 Hen. 4, No. 1, fo. 1. This record has, however, been attacked as not being authentic. See Harcourt, "His Grace the Steward and the Trial of Peers," p. 416, and, on the other hand, Pike, Constitutional History of the House of Lords, p. 212. However, in 1499 the trial of the Earl of Warwick was undoubtedly held before the Court of the Lord High Steward.

(*p*) Treason Act, 1695 (7 & 8 Will. 3, c. 3), s. 11.

(*q*) *I.e.*, the lords temporal (see Pike, Constitutional History of the House of Lords, p. 219). The last lord spiritual who sat and voted in the Court of the Lord High Steward was Thomas Docwra, Prior of St. John of Jerusalem, at the trial of the Duke of Buckingham in 1521.

(*a*) See also 2 Hawk. P. C., 7th ed., c. 44, ss. 7, 8.

(*b*) Lord Delamere was tried for high treason in the Court of the Lord High Steward in 1686 (11 State Tr. 510).

(*c*) See title CONSTITUTIONAL LAW, Vol. VI., p. 329.

(*d*) The commission of the Lord High Steward empowers him to send for the bill.

as guilty or not guilty "upon my honour." The Lord High Steward has no vote. When the trial is concluded the Lord High Steward breaks his staff in token of the termination of his tenure of office. The judges are invited to attend and advise on points of law (*e*).

Part IV.—The Judicial Committee of the Privy Council.

SECT. 1.—*Constitution.*

Sovereign in Council.

46. The jurisdiction of the Sovereign in Council arises out of the common law and the royal prerogative, but in most instances, so far as the United Kingdom is concerned, this jurisdiction has been transferred to the ordinary courts of law. An appeal, however, in certain cases from the United Kingdom, and in cases from courts having jurisdiction outside the United Kingdom, to the Sovereign in Council still exists.

Judicial Committee.

47. In 1833 the Judicial Committee of the Privy Council was constituted (*f*). The committee consists of the President of the Council, the Lord Keeper or first Lord Commissioner of the Great Seal of England, and all privy councillors who have held these offices, or hold or have held high judicial office, that is to say who have been lords of appeal in ordinary, judges of the Supreme Courts of England or Ireland, or of the Court of Session in Scotland (*g*). The Sovereign may also by sign manual appoint two other privy councillors to be members of the committee (*h*). Privy councillors who are or have been judges of the Supreme Court of the Dominion of Canada, or of a superior court in any of the provinces of the Dominion, or of New South Wales, New Zealand, Queensland, South Australia, Tasmania, Victoria, Western Australia, the Cape of Good Hope or Natal, or of any other British possession fixed by Order in Council (*i*), or chief justice or justices of the High Court of Australia, or chief justice or judges of the Supreme Court of Newfoundland, or judges of a superior court of the Transvaal or of the Orange River Colony (*k*), are also members of the Judicial Committee.

(*e*) As to the procedure generally, see 2 Hawk. P. C., 7th ed., c. 44; and *Ferrers' (Earl) Case* (1760), Fost. 138, 142; and see p. 270, *post*.

(*f*) Judicial Committee Act, 1833 (3 & 4 Will. 4, c. 41).

(*g*) There were formerly four paid judges of the Judicial Committee, but under the provisions of ss. 14 and 18 of the Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), they have been replaced by two lords of appeal in ordinary (see p. 23, *ante*), and a judge of the Chancery Division, and a judge of the King's Bench Division.

(*h*) Judicial Committee Act, 1833 (3 & 4 Will. 4, c. 41), s. 1, as amended by the Appellate Jurisdiction Act, 1887 (50 & 51 Vict. c. 70), s. 3.

(*i*) Judicial Committee Amendment Act, 1895 (58 & 59 Vict. c. 44), s. 1.

(*k*) Appellate Jurisdiction Act, 1908 (8 Edw. 7 c. 51), s. 3.

SECT. 1. Constitution.

Any member of the Privy Council, being or having been chief justice or a judge of any High Court in British India (*l*), can by direction of His Majesty be made a member of the Judicial Committee, but there must not be more than two such members at the same time (*m*).

In 1876 an Order in Council was made regulating the attendance of the archbishops and bishops as assessors on the hearing of ecclesiastical cases (*n*).

His Majesty has also power to authorise any person who is or has been a judge of the court appealed from, or of any court to which an appeal lies from that court, to act as assessor on the hearing of the appeal. This provision applies only to British India, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Cape of Good Hope, Natal, Transvaal, Orange River Colony and Newfoundland, and any other colony which may be added by Order in Council (*o*).

A member of the Judicial Committee may resign his office by giving notice in writing to the Lord President of the Council (*p*).

SECT. 2.—*Jurisdiction.*

SUB-SECT. 1.—*How the Jurisdiction Arises.*

Origin of jurisdiction.

48. The jurisdiction of the Judicial Committee of the Privy Council to hear appeals to His Majesty in Council arises from an Order in Council directing that all appeals or petitions, including complaints in the nature of appeals and petitions in the matter of appeals, shall be referred to the Judicial Committee. Such an Order in Council may be made from time to time and remains in force until the order is rescinded. In the absence of such a general Order in Council a special order of reference is necessary in the case of each appeal (*q*).

SUB-SECT. 2.—*Appeals in Admiralty Matters.*

Admiralty matters.

49. Appeals lie to the Judicial Committee from the Admiralty Court of the Cinque Ports (*r*), colonial Courts of Admiralty (*s*), and Vice-Admiralty Courts (*t*).

The appeal from all Admiralty Courts, including the High Court of Justice in prize cases, is to the Judicial Committee (*a*).

(*l*) Appellate Jurisdiction Act, 1908 (8 Edw. 7, c. 51), s. 2 (1).

(*m*) *Ibid.*, s. 2 (2).

(*n*) An Order in Council was made under this power on the 15th November, 1876 (Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, p. 114 ; Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 14).

(*o*) Appellate Jurisdiction Act, 1908 (8 Edw. 7, c. 51), s. 1 (1).

(*p*) *Ibid.*, s. 1 (2).

(*q*) Judicial Committee Act, 1844 (7 & 8 Vict. c. 69), s. 9, as amended by Appellate Jurisdiction Act, 1908 (8 Edw. 7, c. 51), s. 5.

(*r*) *The Clarisse* (1856), Sw. 129.

(*s*) Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), s. 6.

(*t*) Vice-Admiralty Courts Act, 1863 (26 & 27 Vict. c. 24), s. 22.

(*a*) Naval Prize Act, 1864 (27 & 28 Vict. c. 25), ss. 5—8 ; Judicature Act, 1891 (54 & 55 Vict. c. 53), s. 4. Appeals under the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), ss. 14, 27, also go to the Judicial Committee. In all other cases the appeal is to the Court of Appeal (see p. 62, *post*). The

SUB-SECT. 3.—*Appeals from Ecclesiastical Courts.*

SECT. 2. Jurisdiction.

Ecclesiastical matters.

50. In the reign of Henry VIII. (*b*) an appeal from ecclesiastical courts was given to the King in Chancery, to be heard by commissioners appointed under the Great Seal. This court, known as the High Court of Delegates, was abolished in 1832 by an Act which transferred the jurisdiction to the King in Council (*c*). This jurisdiction is now exercisable by the Judicial Committee (*d*).

The courts from which these appeals lie are the various provincial courts of the Archbishops of Canterbury and York (*e*), the diocesan courts of the bishops (*f*), the courts of commissaries, the archidiaconal courts, and the courts of peculiars (*g*). Besides these there are appeals from the court under the Benefices Act, 1898 (*h*), the court under the Church Discipline Act, 1840 (*i*), the court under the Clergy Discipline Act, 1892 (*k*), and from the court under the Public Worship Regulation Act, 1874 (*l*). If, however, the appellant under the Clergy Discipline Act, 1892 (*a*), elect to appeal to the court of the archbishop of the province, there is no further appeal to the Judicial Committee.

SUB-SECT. 4.—*Jurisdiction as to Copyright.*

Copyright.

51. The Judicial Committee of the Privy Council have jurisdiction to license the republication of books which the proprietor

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procedure is regulated by rules, made, as to Admiralty Courts, on 23rd August, 1883 (Statutory Rules and Orders Revised, Vol. II., Colonial Court of Admiralty, pp. 1 *et seq.*, rr. 150—155); as to Indian Vice-Admiralty Courts, on 27th June, 1832 (see Stafford and Wheeler's Privy Council Practice, p. 906); as to Colonial Courts of Admiralty, separate Orders have been made for many colonies (see Statutory Rules and Orders Revised, Vol. II., Colonial Court of Admiralty, pp. 1 *et seq.*); as to Prize Cases, on 11th December, 1865 (see Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, pp. 98 *et seq.*, and title PRIZE LAW AND JURISDICTION).

(*b*) An Act for the Submission of the Clergy (1553), 25 Hen. 8, c. 19, s. 4.

(*c*) Privy Council Appeals Act, 1832 (2 & 3 Will. 4, c. 92), s. 13.

(*d*) Judicial Committee Act, 1833 (3 & 4 Will 4, c. 41).

(*e*) The provincial courts in the case of Canterbury are the Court of Arches, or supreme ecclesiastical court of appeal (*curia de arcubus* as being held in the Church of St. Mary le Bow); the Court of the Vicar-General; the Court of the Master of the Faculties (dealing with matters relating to notaries public); the Court of Audience; and the Court of the Commissary of the Archbishop. In the case of York, the Chancery Court of York or court of appeal; and the Audience Court. "Audience Court (*Curia Audentœ Cantuariensis*) is a court belonging to the Archbishop of Canterbury of equal authority with the Arches Court, though inferior both in dignity and antiquity" (Termes de la Ley, *sub voce* "Audience Court").

(*f*) These are the consistorial courts of each diocese, exercising general jurisdiction. Appeals from the ecclesiastical courts of the Channel Islands are heard and determined by the Bishop of Winchester in person, or if the see is vacant, by the Archbishop of Canterbury in person.

(*g*) The courts of ecclesiastical corporations exempt from archiepiscopal jurisdiction, as, for instance, the Dean and Chapter of Westminster; the Court of the House of Convocation of Oxford University, and probably that of Cambridge.

(*h*) 61 & 62 Vict. c. 48.

(*i*) 3 & 4 Vict. c. 86. See also *Lee* v. *Atherton*, [1904] A. C. 805, P. C.

(*k*) 55 & 56 Vict. c. 32.

(*l*) 37 & 38 Vict. c. 85.

(*a*) 55 & 56 Vict. c. 32, s. 4 (4). See generally as to Ecclesiastical Courts and the procedure therein, title ECCLESIASTICAL LAW.

SECT. 2. Jurisdiction.

of the copyright refuses to republish after the death of the author (*b*).

SUB-SECT. 5.—*Appeals from Courts Outside the United Kingdom.*

Colonial appeals.

52. As His Majesty the King is supreme over all persons and courts within his dominions, a right of appeal in all cases civil and criminal to the King in Council exists from the highest civil court of each separate colony, province, state, or possession, whether it be a court of error or not, except so far as the prerogative in this behalf has been surrendered. Criminal proceedings, however, will only be reviewed if it is shown that by a disregard of the forms of legal process, or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done (*c*). This right has been defined and regulated in the case of British colonies and possessions by statutes (*d*), charters of justice, letters patent, and Orders in Council (*e*). In some cases

(*b*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 5. See title COPYRIGHT AND LITERARY PROPERTY, Vol. VIII., p. 163.

(*c*) *Falkland Islands Co.* v. *R.* (1863), 1 Moo. P. C. C. (N. S.) 299, 312; *Re Dillet* (1870), 12 App. Cas. 459, 467, P. C.

(*d*) From Indian courts by the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), s. 11; from Australian courts by the Australian Courts Act (1828), 9 Geo. 4, c. 83, s. 15, and the Australian Constitutions Act, 1850 (13 & 14 Vict. c. 59), s. 28; from Newfoundland by the Newfoundland Act, 1824 (5 Geo. 4, c. 67), s. 20; and from colonial courts by the Judicial Committee Act, 1844 (7 & 8 Vict. c. 69), s. 1. See title DEPENDENCIES AND COLONIES.

(*e*) Appeals to the Privy Council are regulated in the several colonies, possessions etc. as follows:—Australia (Commonwealth of), Commonwealth of Australia Constitution Act (63 & 64 Vict. c. 12), Sched., s. 74; Bahamas, Supreme Court Act, 1896 (59 Vict. c. 26), ss. 41 and 42; Barbados, Order in Council of 3rd March, 1859 (Statutory Rules and Orders Revised, Vol. XIII., Windward Islands, p. 7); Basutoland, Order in Council of 2nd February, 1884 (*ibid.*, Vol. I., Basutoland, p. 1); Bermuda, Royal Instructions, Act No. 9 of 1704, s. 2, Court Act, 1814, and Bermuda Acts, 1836 (No. 15), 1876 (No. 382); British Columbia, Order in Council of 12th July, 1887 (Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, p. 16); British Guiana, Order in Council of 20th June, 1831 (arts. 25—27) (*ibid.*, Judicial Committee, p. 18); British Honduras, Order in Council of 30th November, 1882 (*ibid.*, Vol. I., British Honduras, p. 4); Supreme Court Ordinance, ss. 54—61 (Consolidated Laws of British Honduras); British New Guinea, Order in Council, 6th March, 1902 (*ibid.*, Vol. I., Australia, p. 70); British North Borneo, Charter of 1st November, 1881, art. 2 (*Lond. Gaz.*, 8th November, 1881, pp. 5448—53); Canada (Dominion of), Revised Laws of Canada, 1886, c. 135, ss. 24, 37; Canadian Act, 54 & 55 Vict. c. 25, s. 4; Cape of Good Hope, Charter of Justice of 4th May, 1832 (arts. 50, 51) (Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, p. 22); Ceylon, Charter of Justice of 18th February, 1833 (*ibid.*, Vol. I., Ceylon, p. 3); Cyprus, Orders in Council, 15th July, 1881, arts. 1—5 (*ibid.*, Vol. V., Foreign Jurisdiction, p. 319), 30th November, 1882, art. 41 (*ibid.*, p. 341); Falkland Islands, Ordinance No. 2 of 1898, s. 25; Federated Malay States, Federated Malay States Order in Council, 1906, of 11th May, 1906 (Statutory Rules and Orders, 1906, p. 945); Fiji Order in Council of 22nd February, 1878 (Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, p. 24); Gambia, Order in Council of 24th November, 1891 (*ibid.*, Vol. VI., Gambia, p. 5); Gibraltar, Order in Council of 17th November, 1888 (arts. 41—47) (*ibid.*, Vol. VI., Gibraltar, p. 19); Gold Coast, Order in Council of 23rd October, 1877 (*ibid.*, Vol. VI., Judicial Committee, p. 27); Hong Kong, Royal Instructions, 21st January, 1846, 19th January, 1888 (*ibid.*, Vol. VI., Judicial Committee, p. 34); Order in Council of 23rd October, 1877 (*ibid.*, Vol. V., Foreign Jurisdiction, p. 248); India, Order in Council of

of self-governing colonies the colonial legislature has had power delegated to it by the Imperial Parliament to make laws limiting the matters in which special leave to appeal to the Privy Council may be asked, but such proposed laws are to be reserved for His Majesty's pleasure (*f*).

Channel Islands.

Appeals from the Channel Islands lie to the King in Council as Duke of Normandy, and are heard by the Judicial Committee in the same way as colonial appeals (*g*).

10th April, 1838 (*ibid.*, Vol. VI., Judicial Committee, p. 37); Letters Patent of 28th December, 1865, and 17th March, 1866 (*ibid.*, Vol. VI., India, pp. 3, 16, 28, 41); Act 14 of 1882, ss. 595 *et seq.*; Act 10 of 1897, s. 3 (24); Act 17 of 1875; Jamaica, Order in Council of 14th April, 1851 (*ibid.*, Vol. VI., Judicial Committee, p. 41), Judicature Law, 1879 (No. 24 of 1879); Leeward Islands, Order in Council, 24th March, 1880 (*ibid.*, Vol. VI., Judicial Committee, p. 50), Supreme Court Acts, 1873, 1880, 1884, 1887; Malta, Order in Council of 18th December, 1824 (*ibid.*, Vol. VI., Judicial Committee, p. 52); Manitoba, Orders in Council, 26th November, 1892 (*ibid.*, Vol. VI., Judicial Committee, p. 55; Mauritius, Order in Council, 13th April, 1831, 23rd October, 1851 (*ibid.*, Vol. VIII., Mauritius, pp. 21, 25); Natal, Order in Council, 19th July, 1870 (*ibid.*, Vol. VI., Judicial Committee, p. 58); New Brunswick, Order in Council of 27th November, 1852 (*ibid.*, Vol. VI., Judicial Committee, p. 61); New South Wales, Order in Council of 13th November, 1850 (*ibid.*, Vol. VI., Judicial Committee, p. 64); New Zealand, Order in Council of 16th May, 1871 (*ibid.*, Vol. VI., Judicial Committee, p. 68); Newfoundland, Charter of Justice of 19th September, 1825 (*ibid.*, Vol. IX., Newfoundland, p. 5); North-West Territories, Order in Council of 30th July, 1891 (*ibid.*, Vol. VI., Judicial Committee, p. 71), Canadian Acts, 49 Vict. c. 50; Nova Scotia, Order in Council of 20th March, 1863 (*ibid.*, Vol. VI., Judicial Committee, p. 73); Ontario, Revised Statutes of Ontario, 1897, s. 4, c. 48, p. 549; Orange River Colony, Order in Council of 23rd June, 1904 (Statutory Rules and Orders, 1904, p. 695); Prince Edward Island, Common Law Procedure Act, 1873 (36 Vict. c. 22 (Prince Edward Island), s. 158, Royal Instructions read to Sir J. Colborn 13th December, 1838; Quebec, Code of Civil Procedure, arts. 1178—1182; Queensland, Order in Council of 30th June, 1860 (*ibid.*, Vol. VI., Judicial Committee, p. 77); St. Helena, Order in Council of 13th February, 1839 (*ibid.*, Vol. XI., St. Helena, p. 1); Seychelles, Order in Council of 10th August, 1903, art. 14 (*ibid.*, Vol. XI., Seychelles, p. 9); Sierra Leone, Order in Council of 26th February, 1867 (*ibid.*, Vol. VI., Judicial Committee, p. 81), and 24th November, 1891 (*ibid.*, Vol. VI., Gambia, p. 5); South Australia, Order in Council of 9th June, 1860 (*ibid.*, Vol. VI., Judicial Committee, p. 85); Southern Nigeria, Orders in Council of 5th July, 1889 (*ibid.*, Vol. VI., Judicial Committee, p. 47), 29th December, 1887, 24th July, 1901 (*ibid.*, Vol. V., Foreign Jurisdiction, pp. 150, 151); Straits Settlements, Civil Appeals Ordinance, 1893 (No. 2 of 1893); Swaziland, Order in Council of 27th February, 1906 (Statutory Rules and Orders, 1906, p. 948); Tasmania, Charter of Justice of 4th March, 1831 (Statutory Rules and Orders Revised, Vol. I., Australia, p. 50); Transvaal, Order in Council of 15th September, 1902 (*ibid.*, Vol. VI., Judicial Committee, p. 88); Trinidad and Tobago, Orders in Council, 17th November, 1888, and 20th October, 1898 (*ibid.*, Vol. XIII., Trinidad and Tobago, pp. 4, 5); Judicature Ordinance, 1879; Judicature (Tobago) Ordinance, 1898; Victoria, Order in Council of 9th June, 1860 (*ibid.*, Vol. VI., Judicial Committee, p. 90), Supreme Court Act, 1890, s. 231; Western Australia, Order in Council of 11th October, 1861 (*ibid.*, Vol. VI., Judicial Committee, p. 93); Windward Islands, Orders in Council of 3rd March, 1859 (*ibid.*, Vol. XIII., Windward Islands, p. 7). See also title DEPENDENCIES AND COLONIES.

(*f*) In the case of the Commonwealth of Australia, by the Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), Sched. (74).

(*g*) Appeals from Jersey are regulated by Orders in Council of 19th May, 1671, and 15th July, 1835 (Statutory Rules and Orders Revised, 1904, Vol. VI., Judicial Committee, pp. 33, 44). Those from Guernsey by Orders in Council of 13th May, 1823, and 15th July, 1835 (*ibid.*, pp. 30, 33).

SECT. 2. Jurisdiction.

Appeal by special leave.

53. Besides those cases in which appeals lie by right of a grant contained in the instrument constituting the court, a person aggrieved by a decision of a court may present a petition, supported by affidavit, praying for leave to appeal to the Judicial Committee on special grounds (*h*). Such leave will not be granted in cases where it can be shown that the prerogative power to grant leave to appeal has been surrendered (*i*). If the Court below has power to grant leave to appeal an application for leave should be made to that court in the first instance (*k*).

Appeals under Foreign Jurisdiction Act.

54. In addition to the British colonies and possessions, there are places where, by treaty, grant, usage, sufferance, and other lawful means, His Majesty has power and jurisdiction, and where, under the Foreign Jurisdiction Act, 1890 (*l*), and the Acts repealed by that statute, courts have been established. The appeals from these courts are governed by the Orders in Council establishing or otherwise regulating them (*m*). These appeals are in some cases direct to the King in Council (*n*), and in others to some colonial court and thence to the King in Council (*o*).

(*h*) The petition must disclose all the circumstances under which the leave is sought (*Lyall* v. *Jardine* (1870), 7 Moo. P. C. C. (N. S.) 116; *Mussoorie Bank* v. *Raynor* (1882) 7 App. Cas. 321, 328, P. C.; *Baudains* v. *Jersey Banking Co.* (1888), 13 App. Cas. 832, P. C.), must indicate the questions to be raised at the hearing (*Soree Monee Dossee* v. *Juggut Indro Narain Chowdery* (1866), 11 Moo. Ind. App. 1), and disclose a case in law and on the merits. The petition must also show special grounds for its being granted (*Ex parte Kensington* (1863), 15 Moo. P. C. C. 209). See also, as to appeals, title DEPENDENCIES AND COLONIES.

(*i*) As in the case of questions as to the limits *inter se* of the constitutional powers of the Commonwealth of Australia, and those of any State etc., see Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), Sched. (clause 74). See *Kennedy* v. *Purcell* (1888), 59 L. T. 279, P. C.; *Théberge* v. *Laudry* (1876), 2 App. Cas. 102, P. C.; or where the court is to be guided by equity and good conscience (*Moses* v. *Parker*, [1896] A. C. 245, P. C.).

(*k*) *Ex parte Kensington* (1863), 15 Moo. P. C. C. 209.

(*l*) 53 & 54 Vict. c. 37.

(*m*) The appeals from these courts are regulated as follows:—Africa, Order in Council of 15th October, 1889 (art. 82) (Statutory Rules and Orders Revised, Vol. V., Foreign Jurisdiction, pp. 1, 22), Order in Council of 20th October, 1898 (*ibid.*, pp. 115, 127); Brunei, Order in Council of 24th July, 1901 (arts. 69—80) (*ibid.*, pp. 189, 206); China and Corea, Order in Council of 24th October, 1904 (arts. 87, 115—117) (Statutory Rules and Orders, 1904, pp. 223, 231, 232); Eastern Africa, Order in Council of 11 August, 1902 (arts. 9—11) (Statutory Rules and Orders Revised, Vol. V., Foreign Jurisdiction, pp. 49, 50); Morocco, Order in Council of 28th November, 1889 (arts. 44, 105) (*ibid.*, pp. 425, 441, 454); Muscat, Order in Council of 4th November, 1867 (arts. 6—14) (*ibid.*, pp. 472, 474); North-Eastern Rhodesia, Order in Council of 21st January, 1900 (art. 28) (*ibid.*, pp. 56, 63); Ottoman Dominions, Order in Council of 8th August, 1899 (arts. 62, 133—135) (*ibid.*, pp. 742, 763, 780); Pacific Ocean, Order in Council of 15th March, 1893 (art. 88) (*ibid.*, pp. 484, 511); Persia, Order in Council of 13th December, 1889 (arts. 230—232) (*ibid.*, pp. 575, 624); Persian Coast and Islands, Order in Council of 13th December, 1889 (arts. 23—31) (*ibid.*, pp. 667, 676); Siam, Order in Council of 16th February, 1903 (arts. 103—107) (*ibid.*, pp. 691, 723); Somaliland, Order in Council of 7th October, 1899 (art. 23) (*ibid.*, pp. 173, 181); Wei-hai-Wei, Order in Council of 24th July, 1901 (arts. 68—80) (*ibid.*, pp. 283, 300—303); Zanzibar, Order in Council of 7th July, 1897 (art. 29) (*ibid.*, pp. 87, 97).

(*n*) In the cases of Africa, China and Corea, Eastern Africa, North-Eastern Rhodesia, the Ottoman Dominions, Persia, and Somaliland.

(*o*) In the case of Brunei and Siam, to the Supreme Court of the Straits

SUB-SECT. 6.—*Jurisdiction as to Schemes for Endowed Schools.*

SECT. 2. Jurisdiction.

Endowed schools.

55. The governing body of any endowment to which a scheme under the Endowed Schools Act, 1869 (*p*), relates, or any person or corporation aggrieved by the scheme, may, in certain cases, within two months after publication of the scheme when approved, petition His Majesty in Council against the scheme (*q*). Such petitions are to be referred to the Judicial Committee as if they were appeals from courts from which an appeal lies to the Judicial Committee (*r*).

SECT. 3.—*Practice and Procedure.*

SUB-SECT. 1.—*Ordinary Appeals.*

Regulation of practice.

56. The practice and procedure of the Judicial Committee in ordinary appeals is, as from 1st January, 1909 (*s*), regulated by Orders in Council made in that behalf on 6th March, 1896 (*a*), and 21st December, 1908 (*b*).

(i.) *Leave to Appeal.*

Leave to appeal.

57. Appeals lie either by the right of grant, in pursuance of leave obtained by the appellant from the court appealed from, or by reason of special leave granted by the Judicial Committee (*c*). The latter appeals arise either where leave to appeal has been refused by the court below, or where the leave to appeal was granted on some special point, and the appellant wishes to raise points not included in the leave to appeal or not decided at some stage in the action previous to the decision of the court appealed from, or where the court below does not possess power to grant leave to appeal. Special leave may also be obtained to avoid having recourse to an intermediate court of appeal, where a question of law is raised by the proceedings (*d*).

Refusing leave.

A refusal to allow an appeal to the Judicial Committee arises in most cases by reason of the court below holding that the amount in dispute is below the appealable value; in such a case, in the petition against that holding, it is advisable to ask for special leave to appeal, as the Judicial Committee, if they affirm the decision of the court below as to the amount in dispute, may still, upon its

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Settlements; of Morocco, to the Supreme Court of Gibraltar; of Muscat, the Persian Coast and Islands, and Zanzibar, to the High Court of Bombay; of the Pacific Ocean, to the Supreme Court of Fiji; of Wei-hai-Wei, to the Supreme Court of Hong-Kong; of Southern Rhodesia, to the Supreme Court of the Cape of Good Hope.

(*p*) 32 & 33 Vict. c. 56.

(*q*) Endowed Schools Act, 1869 (32 & 33 Vict. c. 56), s. 39.

(*r*) Endowed Schools Act, 1873 (36 & 37 Vict. c. 87), s. 14.

(*s*) Judicial Committee Rules, 1908, r. 88; Statutory Rules and Orders, 1908, p. 405, No. 1288, L. 43; [1909] W. N., Pt. II., pp. 50—58.

(*a*) Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, p. 13.

(*b*) *Ibid., ubi supra.*

(*c*) Judicial Committee Rules, 1908, r. 2; Statutory Rules and Orders, 1908, p. 406. See *Daily Telegraph Co.* v. *McLaughlin*, [1904] A. C. 776, P. C.; *Victorian Railways Commissioners* v. *Brown*, [1906] A. C. 381, P. C.; *R.* v. *Lounds*, [1904] A. C. 412, P. C.

(*d*) *Harrison* v. *Scott* (1846), 5 Moo. P. C. C. 357.

SECT. 3. Practice and Procedure.

appearing that the question involves some general right, grant special leave to appeal (*e*).

Where the court below is not a court of error or court of appeal, power is given by Order in Council to admit appeals either generally or as to any particular case (*f*).

Petition for leave.

58. The petition asking for special leave to appeal must state succinctly and fairly all such facts as it may be necessary to state in order to enable the Judicial Committee to advise His Majesty whether such leave ought to be granted. The petition must not travel into extraneous matter, and must deal with the merits of the case only so far as is necessary for the purpose of explaining and supporting the particular grounds upon which special leave to appeal is sought (*g*). It is necessary that there should be *uberrima fides* on the part of the petitioner (*h*).

The petitioner must lodge at least three copies of his petition for special leave to appeal together with an affidavit that, to the best of his knowledge, information, and belief, the allegations contained in the petition are true (*i*). The petition for special leave to appeal may be lodged at any time after the date of the judgment sought to be appealed against, but with the least possible delay (*k*). Where the Judicial Committee advise His Majesty to grant special leave to appeal, they must in their report specify the amount of security for costs (if any) to be lodged by the petitioner, and the period (if any) within which such security is to be lodged and, unless the circumstances of a particular case render such a course unnecessary, provide for the transmission of the record by the registrar of the court appealed from to the registrar of the Privy Council, and provide further matters as the justice of the case may require (*l*).

Appeal in *formâ pauperis*.

59. A person wishing to appeal *in formâ pauperis* must apply by petition, accompanied by a certificate of counsel that there are reasonable grounds for the appeal (*m*), and by an affidavit stating that he is not worth more than £25 besides his wearing apparel and his interest in the appeal. The petition should state that he is unable to provide sureties (*n*). A petitioner *in formâ*

(*e*) *Gungowa Kome Malupa* v. *Erawa Kome Jogapa* (1870), 13 Moo. Ind. App. 433; *Brown* v. *McLaughan* (1870), L. R. 3 P. C. 458.

(*f*) Judicial Committee Rules, 1908, rr. 2, 3; Statutory Rules and Orders, 1908, No. 1288, L. 43, pp. 406, 407; [1909] W. N., Pt. II., pp. 50—58. See also Judicial Committee Act, 1844 (7 & 8 Vict. c. 69), s. 1, and *Ewing* v. *Dominion Bank*, [1904] A. C. 806, P. C.; *Clergue* v. *Murray*, [1903] A. C. 521, P. C.

(*g*) *Lyall* v. *Jardine* (1870), 7 Moo. P. C. C. (N. S.) 116; *Mussoorie Bank* v. *Raynor* (1882), 7 App. Cas. 328, P. C.; *Baudains* v. *Jersey Banking Co.* (1888), 13 App. Cas. 832, P. C.; *Goree Monee Dossee* v. *Juggut Indro Narain Chowdery* (1866), 11 Moo. Ind. App. 1; *Sheo Singh Rai* v. *Mussumut Dakho* (1878), L. R. 5 Ind. App. 87; *Annundomoyee Chowd* v. *Sheeb Chunder Roy* (1862), 9 Moo. Ind. App. 287; *Ex parte Kensington* (1863), 15 Moo. P. C. C. 209.

(*h*) *Ram Sabuk Bose* v. *Monmohini Dossee* (1874), L. R. 2 Ind. App. 71, 81.

(*i*) Judicial Committee Rules, 1908, r. 4, *ubi supra*, p. 407.

(*k*) *Ibid.*, r. 5.

(*l*) *Ibid.*, r. 6.

(*m*) *Lait* v. *Bailey* (1851), 7 Moo. P. C. C. 436; *Watts* v. *Beaman* (1854), 9 Moo. P. C. C. 81. See also *Mitchell* v. *New Zealand Agency Co.*, [1904] A. C. 149; *Ponamma* v. *Arumogam*, [1902] A. C. 561; *Quinlan* v. *Quinlan*, [1901] A. C. 612; *Walker* v. *Walker*, [1903] A. C. 170, P. C.

(*n*) Judicial Committee Rules, 1908, r. 8; and see *Kelly* v. *Corbett* (1860), 14 Moo. P. C. C. 89.

pauperis is relieved from the payment of fees, and from lodging security for costs (*o*), but must pay for preparing and printing the record.

If a petition to appeal *in formâ pauperis* is dismissed, the Judicial Committee may advise His Majesty to order that the petitioner may be excused from payment of the Council office fees usually chargeable to a petitioner in respect of a petition for leave to appeal (*p*).

An appellant *in formâ pauperis* may be awarded costs according to the rules of the House of Lords as to pauper costs (*q*).

(ii.) *Preparation of Record.*

The record.

60. After an appellant has fulfilled the conditions governing an appeal so far as the court below is affected, or has obtained special leave to appeal, the appellant is required without delay to take all necessary steps to have the record transmitted to the registrar of the Privy Council (*r*). The record must be printed in accordance with prescribed rules (*s*), and may be printed either abroad or in England (*t*). Where the record is printed abroad, the registrar of the court below must, at the expense of the appellant, transmit to the registrar of the Privy Council forty copies of such record, one of which copies he must certify to be correct by signing his name on, or initialling every eighth page thereof, and by affixing thereto the seal of any of the courts appealed from (*a*).

Where the record is printed in England, the registrar must, at the expense of the appellant, transmit to the registrar of the Privy Council one certified copy of such record, together with an index of all the papers and exhibits in the case. No other certified copies of the record may be transmitted to the agents in England by or on behalf of the parties to the appeal (*b*).

Where part of the record is printed abroad the above rules apply, as far as practicable, to such parts as are printed abroad and in England respectively (*c*).

The reasons given by the judge, or any of the judges, for or against any judgment pronounced in the course of the proceedings out of which the appeal arises, are to be communicated by such judge or judges in writing to the registrar, and are to be transmitted to the registrar of the Privy Council at the same time as the record is transmitted (*d*).

(*o*) Judicial Committee Rules, 1908, r. 9; Statutory Rules and Orders, 1908, No. 1288, L. 43, p. 407; [1909] W. N., Pt. II., pp. 50—58.

(*p*) *Ibid.*, r. 10, *ubi supra*, p. 408.

(*q*) *Wasteneys* v. *Wasteneys*, [1900] A. C. 446, P. C. That is, no fees of counsel are allowed, but the solicitor has his out of pocket costs and a reasonable allowance to cover office expenses etc.

(*r*) Judicial Committee Rules, 1908, r. 11, *ubi supra*, p. 408.

(*s*) *Ibid.*, r. 12.

(*t*) *I.e.*, in demy quarto on paper 11 in. by 8½ in., in pica type, but accounts, tabular matter, and notes in long primer, forty-seven lines of pica to the page, each tenth line to be numbered. Fifty copies to cost 38*s.* per sheet of eight pages (*ibid.*, Sched. A).

(*a*) Judicial Committee Rules, 1908, r. 13, *ubi supra*, p. 409.

(*b*) *Ibid.*, r. 14.

(*c*) *Ibid.*, r. 15.

(*d*) *Ibid.*, r. 16.

SECT. 3. Practice and Procedure.

Documents.

The registrar, as well as the parties and their agents, must endeavour to exclude from the record all documents (especially such as are merely formal) that are not relevant to the subject-matter of the appeal, and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be printed or copied must be enumerated in a list to be placed after the index or at the end of the record (*e*).

Where one party objects to the inclusion of a document in the record, on the ground that it is unnecessary or irrelevant, and the other party insists on its being included, the record as finally printed must, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate, in the index or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to (*f*).

Registration of record.

The record must be registered in the registry of the Privy Council as soon as it is received, with the date of arrival, the names of the parties, the date of the judgment appealed from, and the description, whether "printed" or "written." A record not printed in the prescribed manner (*g*) is to be treated as written. Appeals are to be numbered consecutively in each year in the order in which they are received (*h*).

The parties are entitled to inspect the record and to extract all necessary particulars therefrom for the purpose of entering an appearance (*i*).

Appearance.

61. When the record arrives in England either wholly or partly written, the appellant must within four months, if the appeal comes from certain courts (*k*), and within two months in other cases, enter an appearance and bespeak a typewritten copy of the record, or of such parts thereof as it may be necessary to have copied (*l*).

After entering his appearance the appellant must forthwith give notice thereof to the respondent, if the latter has entered an appearance (*m*).

Special case.

62. When it appears likely that the decision of a matter on appeal will turn exclusively on a question of law, the parties, with the sanction of the registrar of the Privy Council, may submit such question of law to the Judicial Committee in the form of a special

(*e*) Judicial Committee Rules, 1908, r. 17; Statutory Rules and Orders, 1908, No. 1288, L. 43, p. 408; [1909] W. N., Pt. II., pp. 50—58.

(*f*) Judicial Committee Rules, 1908, r. 18, *ubi supra*, p. 409.

(*g*) See p. 35, note (*t*), *ante*.

(*h*) Judicial Committee Rules, 1908, r 19, *ubi supra*, p. 409.

(*i*) *Ibid.*, r. 20.

(*k*) *I.e.*, in the case of Australia (and the constituent States thereof), Basutoland, British East Africa, British Honduras, British North Borneo, Brunei, Ceylon, China, Eastern African Protectorates, Falkland Islands, Federated Malay States, Fiji, Hong-Kong, India, Mauritius, New Zealand, Persia, Seychelles, Somaliland Protectorate, Straits Settlements, Zanzibar (*ibid.*, Sched. B.).

(*l*) *Ibid.*, r. 21. The costs of preparing the copies is fixed at 1½*d.* per folio of English matter; 2*d.* per folio of Indian matter, and 3*d.* per folio of foreign matter (*ibid.*).

(*m*) *Ibid.*, r. 22.

case, and print such parts only of the record as may be necessary for the discussion thereof. But if the Judicial Committee think fit they may order the full discussion of the case. In order to promote such arrangements and simplification of matters in dispute, the registrar may call the parties before him, and, having heard them and examined the record, may report to the Judicial Committee as to the nature of the proceedings (*n*).

Printing records.

63. As soon as the appellant has obtained the typewritten copy of the record, he must arrange the documents in order, check the index, insert marginal notes, and generally do all that is necessary to prepare the copy for the printer, and, if the respondent has entered an appearance, submit the copy prepared for the printer to the respondent for approval. If the parties cannot agree the matter is to be submitted to the registrar of the Privy Council, whose decision thereon shall be final (*o*).

When the typewritten copy of the record is ready for the printer, the appellant must lodge it with a request to the registrar to have it printed by His Majesty's Printer or by any other printer on the same terms, and engage to pay the prescribed price (*p*) for fifty copies, or such other number as in the opinion of the registrar the circumstances of the case require (*q*).

Proof print.

64. When the proof prints of the record are ready, the registrar of the Privy Council must give notice to all parties who have entered an appearance, requesting them to attend at the registry, at a time named, to examine the proof prints and compare them with the certified record. After the examination the appellant must lodge his proof print, duly corrected and so far as necessary approved by the respondent, and the registrar must cause the copies of the record to be struck off from this proof print (*r*).

Each party who has entered an appearance is entitled to receive for his own use six copies of the record (*s*).

Costs of printing.

Subject to any special direction from the Judicial Committee, the costs of and incidental to the printing of the record form part of the costs of the appeal, but where a document has been objected to by either party (*t*) if such document on taxation is found to be unnecessary or irrelevant, the costs of printing it are disallowed to or borne by the party insisting on its inclusion (*a*).

(iii.) *Petition of Appeal.*

Petition of appeal.

65. The appellant must lodge his petition of appeal, where it arrives in England printed, within four months in the case of appeals from certain courts (*b*), and within two months in other

(*n*) Judicial Committee Rules, 1908, r. 25; Statutory Rules and Orders, 1908, No. 1288, L. 43, p. 409; [1909] W. N., Pt. II., pp. 50—58.
(*o*) *Ibid.*, r. 23.
(*p*) See p. 35, note (*t*), *ante*.
(*q*) Judicial Committee Rules, 1908, r. 24, *ubi supra*, p. 410.
(*r*) *Ibid.*, r. 26.
(*s*) *Ibid.*, s. 27.
(*t*) See p. 36, *ante*.
(*a*) Judicial Committee Rules, 1908, r. 28.
(*b*) In case of appeals from the courts mentioned in note (*k*), p. 36, *ante*.

SECT. 3. Practice and Procedure.

cases; where it arrives in England written, within one month from the date of the completion of the printing thereof. If there are special reasons the appellant may lodge his petition of appeal prior to the arrival of the record (*c*).

The petition of appeal (*d*) must recite succinctly, and, as far as possible, in chronolgical order, the principal steps in the proceedings from their commencement down to the admission of the appeal, but must not contain argumentative matter, or go into the merits of the case (*e*).

The appellant must, after lodging his petition of appeal, serve a copy thereof indorsed with the date of lodgment without delay on the respondent, as soon as the latter has entered an appearance (*f*).

Setting down.

66. The petitioner must notify the registrar when a petition is ready for hearing, and the petition is thereupon deemed to be set down (*g*).

All petitions which have been set down are to be put in the paper, unless the Judicial Committee otherwise direct, on each day appointed for the hearing of petitions. Petitions, however, in the absence of special circumstances of urgency shown to the satisfaction of the registrar, are not to be put in the paper before the expiration of three clear days, if unopposed, or ten clear days, if opposed, from the lodging thereof, unless in the latter case the opponent consents to an earlier day not less than three clear days from the lodging (*h*).

Summons to hearing.

67. When the Judicial Committee have appointed a day for the hearing of a petition, the registrar is to notify all parties concerned by summons (*i*). If the prayer of a petition is consented to in writing by the opponent, or the petition is of a formal or non-contentious character, the Judicial Committee may, if they think fit, report to His Majesty, or make an order, as the case may be, without requiring the attendance of the parties, and in such case no summons is to be issued, but the registrar is to notify the parties of the making, date, and nature of the report or order (*k*).

Withdrawal.

68. A petitioner who desires to withdraw his petition must give notice in writing to the registrar. Where the petition is opposed the opponent is, subject to any agreement between the parties, entitled to apply to the Judicial Committee for his costs, but where the petition is unopposed, or the parties have agreed as to the costs, the committee may dispose of the petition as a consent petition (*l*). An appeal once incepted can only be withdrawn by leave of the Judicial Committee obtained on petition (*m*).

(*c*) Judicial Committee Rules, 1908, r. 29; Statutory Rules and Orders, 1908, No. 1288, L. 43, p. 411; [1909] W. N., Pt. II., pp. 50—58.
(*d*) As to the form of the petition of appeal, see p. 42, *post*.
(*e*) Judicial Committee Rules, 1908, r. 30, *ubi supra*, p. 411.
(*f*) *Ibid.*, r. 31, *ubi supra*, p. 411.
(*g*) *Ibid.*, r. 53, p. 416.
(*h*) *Ibid.*, r. 54.
(*i*) *Ibid.*, r. 55.
(*k*) *Ibid.*, r. 56.
(*l*) *Ibid.*, r. 57, p. 417.
(*m*) *Reed* v. *Sreemutty Gourmoney Dabee* (1857), 6 Moo. Ind. App. 490.

Delay.

69. Where a petitioner unduly delays bringing his petition to a hearing, the registrar is to call upon him to explain the delay, and if no explanation, or one, in the opinion of the registrar, insufficient, is offered, the registrar is to treat the petition as set down, and, after notifying all parties by summons, to put it in the paper on the next day appointed for the hearing of petitions for such directions as the committee may think fit to give (*n*).

Only one counsel is to be heard on each side on the hearing of a petition (*o*).

Caveat.

70. Where a petition is expected to be lodged, or has been lodged, which does not relate to any pending appeal of which the record has been registered in the registry of the Privy Council, any person claiming a right to appear at the hearing may lodge a caveat, and thereupon is entitled to receive from the registrar of the Privy Council notice of the lodging of the petition (if not lodged at the time of the caveat), and if and when the petition has been lodged to require the petitioner to serve him with a copy of the petition, and to furnish him, at his own expense, with copies of any papers lodged by the petitioner in support of his petition. The caveator shall forthwith, after lodging his caveat, give notice thereof to the petitioner, if the petition has been lodged (*p*).

Service of petition.

71. Copies of petitions relating to any appeals of which the record has been registered in the registry of the Privy Council are to be served on all parties who have entered an appearance. Any party so served is entitled to require the petitioner to furnish him, at his own expense, with copies of any papers lodged in support of the petition (*q*).

Affidavit in support.

72. A petition not relating to any appeal of which the record has been registered in the registry of the Privy Council, or which contains allegations of fact which cannot be verified by reference to the registered record, or any certificate, or duly authenticated statement of the court below, must be supported by an affidavit. Where the petitioner appears in person, this affidavit must be sworn by him, and state that to the best of his knowledge, information, and belief the allegations in the petition are true. Where the petitioner is represented by an agent, the affidavit must be sworn by the agent, and, besides stating that to the best of his knowledge, information, and belief the allegations in the petition are true, show how he obtained his instructions and information (*r*).

Petition for revivor.

73. A petition for an order of revivor or substitution must be accompanied by a certificate or duly authenticated statement from the court below, showing who, in the opinion of that court, is the proper person to be substituted, or entered, on the record in place of, or in addition to, the party who has died, or undergone a change of status (*s*).

(*n*) Judicial Committee Rules, 1908, r. 58; Statutory Rules and Orders, 1908, No. 1288, L. 43, p. 417; [1909] W. N., Pt. II., pp. 50—58.
(*o*) *Ibid.*, r. 59, p. 417. This refers to all petitions except petitions of appeal.
(*p*) *Ibid.*, r. 48, p. 415.
(*q*) *Ibid.*, r. 49, p. 415.
(*r*) *Ibid.*, r. 50, p. 418.
(*s*) *Ibid.*, r. 51, p. 416.

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The registrar may, subject to appeal to the Judicial Committee, refuse a petition on the ground that it contains scandalous matter (*a*).

(iv.) *Withdrawal or Non-Prosecution of Appeal.*

Withdrawing appeal.

74. An appellant, who has not lodged his petition of appeal, may withdraw his appeal by giving notice in writing to the registrar of the Privy Council, who must with all convenient speed by letter notify the registrar of the court appealed from that the appeal has been withdrawn. The appeal stands dismissed as from the date of this letter (*b*).

When an appellant, who has lodged his petition of appeal, desires to withdraw his appeal, he must present a petition to that effect. On the hearing of this petition a respondent who has entered an appearance may (in the absence of any agreement between the parties) apply to the Judicial Committee for his costs. But when the respondent has not entered an appearance, or if he has entered an appearance but consents in writing to the prayer of the petition, the Judicial Committee may, if they think fit, dispose of it similarly to a consent petition, *mutatis mutandis* (*c*)

Non-prosecution of appeal.

75. Where an appellant takes no step in prosecution of his appeal, within four months in the case of appeals from certain courts (*d*), or within two months in other cases from the date of the arrival of the record in England, the registrar of the Privy Council must, with all convenient speed, notify by letter the registrar of the court appealed from that the appeal has not been prosecuted. The appeal stands dismissed for non-prosecution as from the date of this letter without further order (*e*).

Where an appellant who has entered an appearance fails to bespeak a copy, or part of a copy, of a written record as prescribed within the prescribed time (*f*), or having so bespoken a copy fails to take all further steps necessary to complete the printing of the record, or fails to lodge his petition of appeal within the prescribed period (*g*), the registrar of the Privy Council must call upon him to explain his default, and if no explanation is offered, or the explanation is, in the opinion of the registrar, insufficient, the registrar must, with all convenient speed, notify by letter the registrar of the court appealed from that the appeal has not been effectually prosecuted. The appeal stands dismissed for non-prosecution as from the date of this letter. The registrar must send a copy of this letter to all parties who have entered an appearance (*h*).

Summons to show cause.

76. Where an appellant, who has lodged his petition of appeal, fails to prosecute his appeal with due diligence, the registrar of the

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(*a*) Judicial Committee Rules, 1906, r. 52; Statutory Rules and Orders, 1908, No. 1288, L. 43; [1909] W. N., Pt. II., pp. 50—58.
(*b*) *Ibid.*, r. 32.
(*c*) Judicial Committee Rules, 1908, r. 33.
(*d*) In the case of the courts mentioned in note (*k*), p. 36, *ante*.
(*e*) Judicial Committee Rules, 1908, r. 34.
(*f*) See p. 36, *ante*.
(*g*) See p. 37, *ante*.
(*h*) Judicial Committee Rules, 1908, r. 35.

Privy Council must call upon him to explain his default, and if no explanation is offered, or the explanation is, in the opinion of the registrar, insufficient, the registrar must issue a summons calling on the appellant to show cause before the Judicial Committee, at a time named, why the appeal should not be dismissed for non-prosecution. No such summons can be issued before the expiration of one year from the date of the arrival of the record in England. If the respondent has entered an appearance, the registrar must send him a copy of the summons, and he may be heard at the hearing and ask for costs and other relief. The Judicial Committee may, after considering the matter, recommend His Majesty to dismiss the appeal for non-prosecution, or give such other directions as the justice of the case may require (*i*).

Restoration of appeal.

77. An appellant whose appeal has been dismissed for non-prosecution may present a petition to His Majesty in Council praying that his appeal may be restored (*k*).

(v.) *Appearance by Respondent.*

Appearance by respondent.

78. The respondent may enter an appearance at any time after the arrival of the record and before the hearing of the appeal, but he must bear or be disallowed costs occasioned by any undue delay in entering his appearance, unless the Judicial Committee otherwise direct (*l*).

After entering an appearance the respondent must forthwith give notice thereof to the appellant if the latter has entered an appearance (*m*).

Where there are two or more respondents, and only one or more enter an appearance, the appearance form must set out the names of those who appear (*n*).

Two or more respondents may at their own risk as to costs enter separate appearances in the same appeal (*o*).

A respondent who has not entered an appearance is not entitled to receive any notice relating to the appeal from the registrar of the Privy Council, nor be allowed to lodge a case (*p*).

Default of appearance.

79. Subject to any special order of the Judicial Committee to the contrary, if a respondent, who was a respondent when the appeal was admitted, whether by order of the court below or by an Order in Council giving special leave to appeal, fails to enter an appearance, and it appears from the terms of the said order or Order in Council, or from the record, or from a certificate of the registrar of the court below, that the said non-appearing respondent has received notice, or is otherwise aware of the said order or Order in Council, and has also received notice or is otherwise aware of the despatch of the record to England, the appeal may be set down *ex parte*

(*i*) Judicial Committee Rules, 1908, r. 36 ; Statutory Rules and Orders, 1908, p. 412, No. 1288, L. 43 ; [1909] W. N., Pt. II., pp. 50—58.
(*k*) *Ibid.*, r. 37, p. 413.
(*l*) *Ibid.*, r. 38.
(*m*) *Ibid.*, r. 39.
(*n*) *Ibid.*, r. 40.
(*o*) *Ibid.*, r. 41.
(*p*) *Ibid.*, r. 42.

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as against him, at any time after the expiration of three months after the petition of appeal has been lodged (*q*).

If the non-appearing respondent was made a respondent by Order in Council subsequently to the admission of the appeal, and it appears from the record, or supplementary record, or from a certificate of the registrar of the court below, that the non-appearing respondent has received notice or was otherwise aware of any intended application to bring him on the record as a respondent, the appeal may be set down *ex parte* as against him, at any time after the expiration of three months after service on him of the Order in Council bringing him on the record as a respondent (*r*).

If it is shown to the satisfaction of the Judicial Committee, by affidavit or otherwise, that the appellant has made every reasonable endeavour to serve a non-appearing respondent with the prescribed notices (*s*), and has failed to effect service, or that it is not the intention of the respondent to enter an appearance, the appeal may, without further order and at the risk of the appellant, be set down *ex parte* as against the non-appearing respondent (*t*).

Defence in *formâ pauperis*.

80. A respondent who desires to defend an appeal *in formâ pauperis* may present a petition to that effect to His Majesty in Council, accompanied by an affidavit stating he is not worth £25 except his wearing apparel and his interest in the subject-matter of the appeal (*a*).

(vi.) *Form of Documents.*

Petitions.

81. Petitions for orders and directions as to practice and procedure, arising after the lodging of the petition of appeal, and not involving any change in the parties, are to be addressed to the Judicial Committee. All other petitions are to be addressed to His Majesty in Council, but a petition properly so addressed may include, as incidental to the relief sought, a prayer for orders or directions as to practice and procedure (*b*).

Orders.

Orders, which do not embody any special terms or include any special directions, need not be drawn up, unless the Judicial Committee so direct, but a note thereof is to be made by the registrar of the Privy Council (*c*).

Form.

Petitions must consist of consecutively numbered paragraphs, written, typewritten or lithographed on brief-paper with quarter margin and indorsed with the name of the court appealed from, the short title and Privy Council number of the appeal, or the short title of the petition (as the case may be) and the name and address of the London agent (if any) of the petitioner, but need not be signed. Petitions for special leave to appeal may be printed (in demy quarto or other convenient form) (*d*).

(*q*) Judicial Committee Rules, 1908, r. 43 a; Statutory Rules and Orders, 1908, p. 413, No. 1288, L. 43; [1909] W. N., Pt. II., pp. 50—58.
(*r*) *Ibid.*, r. 43 b, p. 414.
(*s*) That is, those mentioned in the two last preceding paragraphs.
(*t*) Judicial Committee Rules, 1908, r. 43, *ubi supra*, p. 413.
(*a*) *Ibid.*, r. 44, p. 414.
(*b*) *Ibid.*, r. 45, p. 414.
(*c*) *Ibid.*, r. 46, p. 415.
(*d*) *Ibid.*, r. 47, p. 415.

(vii.) *Lodging Cases.*

Case to be lodged.

82. No party to an appeal is entitled to be heard by the Judicial Committee unless he has previously lodged his case. A respondent, however, who is merely a stakeholder or trustee with no other interest in the appeal, may give notice in writing to the registrar of his intention not to lodge a case, reserving his right to address the committee on the question of costs (*e*).

The case may be printed either in England or abroad, but in either case must be printed in the prescribed manner (*f*), and shall be signed by at least one of the counsel who attends the hearing of the appeal, or by the party if he appears in person (*g*). Each party must lodge forty copies of his case (*h*).

Form of case.

83. The case must consist of paragraphs numbered consecutively, and state as concisely as possible the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the case, and the reasons of appeal. References by page and line to the relevant portions of the record are to be, as far as practicable, printed in the margin; long extracts from the record must, as far as practicable, not be printed in the case. The taxing officer must, in taxing the costs, either of his own motion or at the instance of the opposite party inquire into any unnecessary prolixity in the case, and disallow the costs occasioned thereby (*i*).

Two or more respondents may, at their own risk as to costs, lodge separate cases (*k*).

Each party after lodging his case must forthwith give notice to the other party (*l*).

"Case notice."

84. The party who lodges his case first may, at any time after the expiration of three clear days after notice of lodgment of his case, serve the other party (if he has not lodged his case) with a "case notice" requiring him to lodge his case within one month from service of the case notice, and informing him that in default the appeal will be set down for hearing *ex parte* against him. If the other party fails to comply with the case notice, the party who has lodged his case may, at any time after the expiration of the time limited by the case notice, lodge an affidavit of service (setting out the terms of the case notice), and the appeal, if all other conditions for being set down are satisfied, is to be set down *ex parte* as against the party in default. No case notice, however, may be served until after the completion of the printing of the record. The taxing officer in adjusting the costs of the appeal may inquire generally into the circumstances in which the case notice was served, and, if satisfied that there was no reasonable necessity for serving it, may disallow the costs of it to the party serving it. The

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(*e*) Judicial Committee Rules, 1908, r. 60; Statutory Rules and Orders, 1908 p. 417, No. 1288, L. 43; [1909] W. N., Pt. II., pp. 50—58.
(*f*) See note (*t*), p. 35, *ante*.
(*g*) Judicial Committee Rules, 1908, r. 61, *ubi supra*, p. 417.
(*h*) *Ibid.*, r. 62.
(*i*) *Ibid.*, r. 63.
(*k*) *Ibid.*, r. 64, p. 418.
(*l*) *Ibid.*, r. 65.

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party in default is not precluded from lodging his case, at his own risk as regards costs and otherwise, at any time up to the date of hearing (*m*).

Setting down.

85. Subject to the rules as to procedure on non-appearance of the respondent (*n*), and as to case notice, an appeal is to be set down *ipso facto* as soon as the cases on both sides are lodged, and the parties thereupon are to exchange cases by handing one another ten copies of their respective cases (*o*).

As soon as the appeal is set down the appellant must attend at the registry and obtain ten copies of the record and cases, and have them bound in the prescribed manner (*p*) for the use of the Judicial Committee. The several documents indicated by incuts are to be arranged in the following order: (1) appellant's case; (2) respondent's case; (3) record; (4) supplementary record, if any (*q*). The appellant must lodge the bound copies not less than four clear days before the commencement of the sittings at which the appeal is to be heard (*r*).

(viii.) *The Hearing.*

Day of hearing.

86. Where the Judicial Committee have appointed a day for the commencement of the sittings for the hearing of appeals, the registrar must, as far as in him lies, make the appointed day known to the agents of all parties concerned, and name a day on or before which appeals must be set down, if they are to be entered in the list of business for the sitting. All appeals set down on or before the day named are, subject to any directions from the committee or agreements between the parties, to be entered in such list of business, and, subject to directions from the committee, are to be heard in the order in which they are set down (*s*).

The registrar of the Privy Council, subject to the rule as to non-appearing respondents (*t*), is to notify the parties to each appeal by summons, at the earliest possible date, of the day appointed for the hearing of their appeal, and the parties must be in readiness on that day (*u*).

The hearing.

87. The hearing is at the bar of the Privy Council. The appellant's counsel begins and has a right of reply (*a*). Not more than two counsel will be heard on a side (*b*). Several parties

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(*m*) Judicial Committee Rules, 1908, r. 66; Statutory Rules and Orders, 1908, No. 1288, L. 43, p. 418; [1909] W. N., Pt. II., pp. 50—58.

(*n*) See p. 42, *ante* (r. 43).

(*o*) Judicial Committee Rules, 1908, r. 67, *ubi supra*, p. 418.

(*p*) In cloth or half leather with paper sides; six leaves of blank paper are to be inserted before the appellant's case. The front cover must bear a printed label stating the title and Privy Council number of the Appeal, the contents of the volume, and the names and addresses of the London agents. The short title and Privy Council number of the appeal must be shown on the back.

(*q*) Judicial Committee Rules, 1908, r. 68, *ubi supra*, p. 419.

(*r*) *Ibid.*, r. 69.

(*s*) *Ibid.*, r. 70.

(*t*) See p. 41, *ante* (r. 42).

(*x*) Judicial Committee Rules, 1908, r. 71, *ubi supra*, p. 419.

(*a*) *Logan* v. *Burslem* (1842), 4 Moo. P. C. C. 292.

(*b*) See Judicial Committee Rules, 1908, r. 71, and title BARRISTERS, Vol. II., p. 417.

in an appeal who are in different interests are heard by separate counsel, but if the interests are the same they must be heard by the same counsel (*c*). Persons interested may intervene (*d*), but not when an appeal is part heard (*e*).

Where legal points of importance arise, especially if the committee who heard the appeal disagree or entertain doubts, the committee will hear and, if necessary, direct further argument, in which case one counsel will be heard on each side (*f*). Re-argument may also be necessary in case of the death before judgment of one of the judges who heard the appeal (*g*).

New points.

88. The committee are very unwilling to entertain any point not duly raised and considered in the court below (*h*), but when a question is raised for the first time on the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent, but expedient, in the interests of justice to entertain the plea (*i*). And if the point is patent on the face of the record, the court will deal with it although it was not taken in the court below (*k*).

Evidence.

89. The committee have power to take evidence (*l*); such evidence is usually by affidavit, and is admitted on applications for leave to appeal, and where the evidence was not and could not be before the court below, as, *e.g.*, when the question is as to circumstances under which the court below dealt with a legal practitioner under its disciplinary powers (*m*).

References.

90. The committee have also power to refer any matters to be examined and reported on to the registrar, or to such other person or persons as shall be appointed by His Majesty in Council or by the Judicial Committee, in the same manner as matters are referred in the Chancery Division to a master (*n*).

Judgment.

91. The judgment of the committee is in the form of a report to His Majesty, advising him as to the appeal. Only one judgment is given; this is delivered in open court, and contains the reasons for the report the committee will present to His Majesty (*o*). When the committee have reported, the report is submitted to His Majesty

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(*c*) *Re Downie and Arrindell* (1841), 3 Moo. P. C. C. 414, 419; *Jewa-Jee* v. *Trimbuk-Jee* (1842), 3 Moo. Ind. App. 138.

(*d*) *Maharajah Ishuree Persad Narain Sing* v. *Lal Chutterput Sing* (1842), 3 Moo. Ind. App. 100, 109; *East India Co.* v. *Robertson* (1859), 7 Moo. Ind. App. 361.

(*e*) *La Banque d'Hochelaga* v. *Murray* (1890), 15 App. Cas. 414, 419, P. C.

(*f*) *Ruckmaboy* v. *Lulloobhoy Mottichund* (1852), 8 Moo. P. C. C. 4, at p. 11.

(*g*) This was the case in *Falkingham* v. *Victorian Railways Commissioner*, see [1900] W. N., Pt. II., p. 55.

(*h*) *Grey* v. *Manitoba and North Western Rail. Co. of Canada*, [1897] A. C. 254, P. C.

(*i*) *Connecticut Fire Insurance Co.* v. *Kavanagh*, [1892] A. C. 473, 480.

(*k*) *Devine* v. *Holloway* (1861), 14 Moo. P. C. C. 290, 298.

(*l*) Judicial Committee Act, 1833 (3 & 4 Will. 4, c. 41), ss. 7, 8.

(*m*) *Smith* v. *Sierra Leone Justices* (1841), 3 Moo. P. C. C. 361, 365.

(*n*) Judicial Committee Act, 1833 (3 & 4 Will. 4, c. 41), s. 17.

(*o*) *Ibid.*, s. 3.

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at the next Council, and when approved is embodied in an Order in Council and then becomes the final decree (*p*).

The costs of appeals are in the discretion of the committee (*a*).

Reserved judgment.

92. Where the Judicial Committee after hearing an appeal reserve their judgment thereon, the registrar must, in due course, notify the parties who attended the hearing of the appeal by summons of the day appointed for the delivery of the judgment (*b*).

(ix.) *Costs.*

Taxation of costs.

93. All bills of costs are to be referred to the registrar of the Privy Council, or such other person as the Judicial Committee may appoint, for taxation. A scale of fees is prescribed by which such taxations are regulated (*c*). Only costs incurred in England are to be taxed in England (*d*).

The registrar must, with all convenient speed after the Judicial Committee have given their decision as to the costs of any matter, issue to the party to whom costs have been awarded an order to tax, and notice of the day and hour appointed by him for taxation. This party must, not less than forty-eight hours before the time appointed for taxation, lodge his bill of costs (with all necessary vouchers) and serve the opposite party with a copy of his bill of costs and of the order to tax and notice (*e*).

If a party fails to lodge his bill of costs and vouchers within the prescribed time, or otherwise delays or impedes the taxation, the taxing officer may, if he thinks fit, disallow his charges for drawing his bill of costs and attending the taxation (*f*).

Appeal.

Any party aggrieved by a taxation may appeal by way of motion to the Judicial Committee. Three clear days' notice of the motion must be given to the opposite party, and a copy of the notice is to be left in the registry of the Privy Council (*g*).

The amount allowed on taxation is, subject to appeal to the Judicial Committee and to any direction from them to the contrary, to be inserted in the Order in Council determining the matter (*h*)

Pauper scale.

Where costs are directed to be taxed on the pauper scale, no fees to counsel are to be allowed, and agents are only to be awarded out-of-pocket expenses to cover office expenses, taken at about three-eighths of the usual professional charges in such matters (*i*).

Security.

When an appellant has lodged security for the respondent's costs, the registrar is to deal with such security in accordance with the

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(*p*) *Pitts* v. *Lafontaine* (1880), 6 App. Cas. 483.

(*a*) Judicial Committee Act, 1833 (3 & 4 Will. 4, c. 41), s. 15; Order in Council, 13th June, 1853, art. 1; Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, p. 1.

(*b*) Judicial Committee Rules, 1908: Statutory Rules and Orders, 1908, No. 1288, L. 43, p. 420; [1909] W. N., Pt. II., pp. 50—58, r. 74.

(*c*) *Ibid.*, r. 75. The scale of fees is prescribed by schedule C to the Rules.

(*d*) Judicial Committee Rules, 1908, r. 76, *ubi supra*, p. 420.

(*e*) *Ibid.*, r. 77.

(*f*) *Ibid.*, r. 78.

(*g*) *Ibid.*, r. 79. As to appeals involving costs only, see title DEPENDENCIES AND COLONIES.

(*h*) *Ibid.*, r. 80.

(*i*) *Ibid.*, r. 81, p. 421.

directions contained in the Order in Council determining the appeal (*k*).

(x.) *Miscellaneous.*

Special directions.

94. The Judicial Committee have power to excuse the parties from compliance with the prescribed rules, and may give such directions as to practice and procedure as they consider just and expedient. Applications to be excused from compliance with any rules are to be addressed to the registrar of the Privy Council, who is to take the instructions of the Judicial Committee thereon, and communicate them to the parties. If the registrar thinks it desirable, or either of the parties so requests in writing, the application will be dealt with in open court. In such a case the application is to be put in the paper for hearing on a day appointed by the committee, and notice is to be given to the parties interested of the time appointed (*l*).

Amending documents.

95. Any document lodged in connection with any matter pending may be amended by leave of the registrar of the Privy Council. If the registrar is of opinion, or either of the parties requests in writing, that the application may be dealt with in open court, the application will be so dealt with. In such a case the application is to be put in the paper for hearing on a day appointed by the Judicial Committee, and notice is to be given to the parties interested of the time appointed (*m*).

Affidavits.

96. Affidavits relating to any matter pending before His Majesty in Council or the Judicial Committee may be sworn before the registrar of the Privy Council (*n*). Where a party changes his agent, such party or the new agent must forthwith give notice to the registrar in writing of the change (*o*).

Solicitors.

97. Proctors, solicitors, and agents admitted to practice before the Judicial Committee must sign a declaration in the prescribed form engaging to observe and obey the Rules, Regulations, Orders, and Practice of the Privy Council, and to pay and discharge, on demand, all fees and charges due and payable upon any matter pending before His Majesty in Council (*p*).

Proctors and solicitors practising in London are allowed to sign the declaration and practice before the Privy Council on production of their certificates without payment of any fees (*q*).

Solicitors not practising in London, but admitted by the High Courts in England or Ireland, by the Court of Session in Scotland, or by the High Courts in any of His Majesty's dominions, may apply, by petition to the Privy Council, for leave to practise before the Judicial Committee, and may be admitted to practice by an Order

(*k*) Judicial Committee Rules, 1908, r. 82; Statutory Rules and Orders, 1908, p. 421, No. 1288, L. 43.
(*l*) *Ibid.*, r. 83.
(*m*) *Ibid.*, r. 84.
(*n*) *Ibid.*, r. 85.
(*o*) *Ibid.*, r. 86
(*p*) Order in Council of 6th March, 1896, r. 1, Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, p. 13. The form of declaration is contained in the Order in Council.
(*q*) Order in Council of 6th March, 1896, r. 2, *ubi supra*, p. 14.

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of Council (*a*) for such period and under such conditions as the Privy Council may direct (*b*).

Any proctor, solicitor, agent, or other person practising before the Privy Council who wilfully acts in violation of the rules and practice of the Privy Council or of the prescribed rules, or who misconducts himself in prosecuting proceedings before the committee, or refuses or omits to pay, on demand, the Council office fees and charges payable by him, is liable to an absolute or temporary prohibition to practise before the Judicial Committee upon cause shown at the bar of the committee (*c*).

Death of party.

98. In the case of the death or change of status of either of the parties, or a transmission of their interest, the suit abates, and an order of revivor must be obtained on petition. In the case of joint appellants the appeal does not abate by reason of the death of one of them (*d*). If a sole respondent dies the appellant must apply for an order of revivor against the personal representatives of the deceased (*e*).

SUB-SECT. 2.—*Ecclesiastical and Maritime Appeals.*

Practice.

99. The practice and procedure of the Judicial Committee in ecclesiastical, vice-admiralty, and prize cases is regulated by an Order in Council of 11th December, 1865, in that behalf (*f*), and by an Order in Council of 21st December, 1908, making rules for and establishing a scale of fees to be allowed on taxation in appeals (*g*).

The petition must be left in the office in duplicate with an office copy of the decree or order appealed against (*h*).

When the appeal has been referred to the Judicial Committee, the inhibition and citation and monition for process are issued by the registrar (*i*). If the inhibition, citation, and monition is not taken out within one month from the date of the petition being referred to the Judicial Committee, the appeal stands dismissed (*k*). The inhibition, citation, and monition must be returned duly served on the registrar of the court below and the opposite

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(*a*) An Order of Council is an order made by the Privy Council itself, and not by His Majesty with the advice of the Privy Council.

(*b*) Order in Council of 6th March, 1896, Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, p. 14, r. 3.

(*c*) *Ibid.*, r. 4.

(*d*) *Bute* (*Marchioness*) v. *Mason* (1849), 7 Moo. P. C. C. 1.

(*e*) *Gobind Chunder Sein* v. *Ryan* (1861), 15 Moo. P. C. C. 247.

(*f*) Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, p. 98.

(*g*) Judicial Committee Rules, 1908. These rules are directed (r. 87) to apply to all matters falling within the appellate jurisdiction of the Judicial Committee subject to the provisions of any statute or statutory rule or order to the contrary.

(*h*) Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, p. 98, r. 3. Appeals are either *apud acta* (where the appellant gives notice to the registrar of the court below that he appeals, and the registrar enters the appeal in the minute book of his court) or *in scriptis* (where there is an instrument of appeal in writing (on a shilling stamp), attested by a notary public and two witnesses).

(*i*) *Ibid.*, r. 4.

(*k*) *Ibid.*, r. 5.

party, together with the process (*l*), within one month from issue in the case of a court within the United Kingdom, and four months in the case of a court without the United Kingdom. In default the appeal stands dismissed (*m*). The respondent may enter appearance at any time after the appeal is referred to the committee (*n*). If the respondent desires to adhere (*o*) to the appeal, he must within one month of appearance lodge declaration of adherence stating from what part of the decree of the court below he desires to appeal (*p*). The appellant must bring in sixty printed copies of the appendix (*q*) within one month of the process being brought in and deliver forty copies to the respondent (*r*). Both parties are to bring in sixty printed copies of their respective cases within one month of the appendix being brought in and deliver forty copies to the opposite party (*s*). The case then stands for hearing (*t*). The appellant may abandon his appeal by filing a proxy stating that he abandons the appeal and consents to be condemned in costs (*u*).

Security for costs.

100. An appellant residing out of the United Kingdom must, within two months after service of a notice on his solicitor to that effect, give security in £200 (*x*). If an appeal stands dismissed under the rules, a motion may be made within a fortnight to reinstate it. An order to reinstate may be made subject to an order as to the costs or otherwise (*y*).

Pleadings.

101. Pleadings and references to the registrar, or to the registrar and merchants, are regulated, as far as they are applicable, by the Rules of the Probate, Divorce and Admiralty Division (Admiralty) for the time being (*a*).

In the case of appeals under the Clergy Discipline Act, 1892 (*b*), it is not necessary to lodge any written statement or printed copies of the case with reference to which the appeal is brought (*c*).

Assessors.

102. On the hearing of ecclesiastical appeals provision is made for the attendance of the archbishops and bishops as assessors according to a rota (*d*).

(*l*) Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, p. 98, r. 6. The process is the whole of the proceedings and proofs in the court below.
(*m*) Order in Council of 11th December, 1865, r. 7.
(*n*) *Ibid.*, r. 8.
(*o*) That is, to appeal against any part of the order of the court below which is prejudicial to him.
(*p*) *Ibid.*, r. 9.
(*q*) That is, the record.
(*r*) *Ibid.*, rr. 10, 28.
(*s*) *Ibid.*, rr. 12, 13, 28.
(*t*) *Ibid.*, r. 14.
(*u*) *Ibid.*, r. 17.
(*x*) *Ibid.*, r. 15.
(*y*) *Ibid.*, r. 20.
(*a*) *Ibid.*, rr. 24, 25. See title ADMIRALTY, Vol. I., p. 117.
(*b*) 55 & 56 Vict. c. 32.
(*c*) Clergy Discipline Rules, 1892, r. 74 (Statutory Rules and Orders Revised, Vol. IV., Ecclesiastical Court, England, p. 61).
(*d*) Order in Council, 28th November, 1876; Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, p. 114.

SECT. 3. Practice and Procedure.

On the hearing of Admiralty appeals the Judicial Committee may, if they think fit, require the attendance of two nautical assessors (*e*). The procedure in relation to hearing and judgment is as in the case of ordinary appeals (*f*).

Admiralty appeals.

103. Appeals from the Admiralty Court of the Cinque Ports, Colonial Courts of Admiralty, and Vice-Admiralty Courts are regulated by rules made on the 23rd August, 1883 (*g*), except in the case of Indian Vice-Admiralty Courts, for which rules were made under the Vice-Admiralty Courts Act, 1832 (*h*), on the 27th June, 1832 (*i*).

Colonial appeals.

Separate rules of procedure have been approved by Order in Council for several colonial Courts of Admiralty (*k*), which possibly may supersede the rules of 1883, and in case of Indian courts those of 1832.

These appeals are regulated so far as regards the Prize Courts of first instance by an Order in Council of the 18th July, 1898 (*l*), while the practice before the Judicial Committee is regulated by rules dated the 11th December, 1865 (*m*).

Rules.

104. The proceedings in appeals, so far as the courts below are concerned, are regulated by the rules of those courts. Before the Judicial Committee procedure on appeals is governed by the Order in Council of 11th December, 1865 (*n*), and fees by the Order in Council of 21st December, 1908 (*o*). Appeals under the Clergy Discipline Act, 1892 (*p*), are regulated by the rules made by virtue of the Act, both in the court below and before the Judicial Committee (*q*).

SECT. 4.—*Officers.*

Officers.

105. The officers of the Judicial Committee of the Privy Council are a registrar and a deputy registrar (*r*). The registrar is appointed

(*e*) Judicial Committee Rules, 1908, r. 73, Statutory Rules and Orders, 1908, No. 1288, L. 43; [1909] W. N., Pt. II., pp. 50-58.

(*f*) See p. 33, *ante*.

(*g*) Statutory Rules and Orders Revised, Vol. II., Colonial Courts of Admiralty, p. 1. Rr. 150—155 deal with appeals. These rules were made under Vice-Admiralty Courts Act, 1863 (26 & 27 Vict. c. 24), s. 14.

(*h*) 2 & 3 Will. 4, c. 51.

(*i*) R. 35 of these rules deals with appeals. It is printed in Safford and Wheeler's Privy Council Practice, p. 906.

(*k*) Namely, in the case of the following courts: Aden, Resident's Court; Bombay, High Court; Canada, Exchequer Court; Cyprus, Supreme Court; Fiji, Supreme Court; Gibraltar, Supreme Court; Jamaica, Supreme Court; Queensland, Supreme Court; Sind, Sadar Court; Straits Settlements Court. See Statutory Rules and Orders Revised, Vol. II., Colonial Court of Admiralty and Vice-Admiralty Court, p. 1.

(*l*) Statutory Rules and Orders Revised, Vol. IX., Navy, p. 275. Rr. 229—234, at pp. 316, 317, relate to appeals.

(*m*) Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, p. 98.

(*n*) Statutory Rules and Orders Revised, Vol. VI., Judicial Committee, p. 98.

(*o*) Statutory Rules and Orders, 1908, No. 1288, L. 43; [1909] W. N., Pt. II., pp. 50 58.

(*p*) 55 & 56 Vict. c. 32.

(*q*) Statutory Rules and Orders Revised, Vol. IV., Ecclesiastical Court, England, pp. 61—109.

(*r*) By Order in Council of 23rd June, 1904 ([1904] W. N., Pt. II., p. 231),

under the sign manual (*s*). In the absence of the registrar the Lord President has power to appoint a deputy (*t*). The duties of the registrar are to be defined in his appointment (*u*). The registrar has power to examine witnesses and take affidavits and depositions on oath (*x*).

The Judicial Committee are empowered to appoint such officer or officers as may be necessary to execute processes (*y*).

Part V.—The Supreme Court of Judicature.

SECT. 1.—*Constitution.*

Constitution of the Supreme Court.

106. The Supreme Court of Judicature was constituted in 1873 (*a*) as from 2nd November, 1874 (*b*), and in it there were consolidated the High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, and the London Court of Bankruptcy (*c*). In the next year, 1874, however, the constitution of the court was postponed until 1st November, 1875 (*d*). Before this deferred constitution the London Court of Bankruptcy was severed from the Supreme Court (*e*), but was again consolidated with that court as from and after 31st December, 1883 (*f*). The Supreme Court is regulated by the Judicature Acts, 1873 to 1902 (*g*), and consists of two permanent divisions (*h*): His Majesty's High Court of Justice and His Majesty's Court of Appeal (*i*).

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it was directed that the duties of the registrar of His Majesty in admiralty and ecclesiastical causes shall be discharged by the registrar of the Privy Council for the time being.

(*s*) Judicial Committee Act, 1833 (3 & 4 Will. 4, c. 41), s. 18.
(*t*) Privy Council Registrar Act, 1853 (16 & 17 Vict. c. 85), s. 2.
(*u*) *Ibid.*
(*x*) *Ibid.*, s. 1.
(*y*) Judicial Committee Act, 1843 (6 & 7 Vict. c. 38), s. 15.
(*a*) Judicature Act, 1873 (36 & 37 Vict. c. 66).
(*b*) *Ibid.*, s. 2.
(*c*) *Ibid.*, s. 3.
(*d*) Judicature (Commencement) Act, 1874 (37 & 38 Vict. c. 83), s. 2.
(*e*) Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 9.
(*f*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 3, 93.
(*g*) (1873) 36 & 37 Vict. c. 66; (1875) 38 & 39 Vict. c. 77; (1876) 39 & 40 Vict. c. 59; (1877) 40 & 41 Vict. c. 9; (1879) 42 & 43 Vict. c. 78; (1881) 44 & 45 Vict. c. 68; (1884) 47 & 48 Vict. c. 61; (1887) 50 & 51 Vict. c. 70; (1890) 53 & 54 Vict. c. 44; (1891, London Causes) 54 & 55 Vict. c. 14; (1891) 54 & 55 Vict. c. 53; (1894) 57 & 58 Vict. c. 16; (1899) 62 & 63 Vict. c. 6; (1902) 2 Edw. 7, c. 31.
(*h*) It must be noted that the term "division" is here used in a sense differing from that in which the term is used in reference to the constitution of the "divisions" of the High Court, and the sitting of the Court of Appeal in "divisions."
(*i*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 4.

SECT. 2. His Majesty's High Court of Justice.

SECT. 2.—*His Majesty's High Court of Justice.*

SUB-SECT. 1.—*Jurisdiction.*

(i.) *In General.*

Jurisdiction of the High Court of Justice.

107. To the High Court of Justice were transferred the jurisdiction possessed by the High Court of Chancery (*k*) (including its common law jurisdiction), the Court of Queen's Bench (*l*), the

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(*k*) The old Court of Chancery consisted of two separate tribunals—an ordinary court of common law and a court of equity. Of these the court of common law was the most ancient, and had jurisdiction in personal actions where a minister or officer of the court was concerned, in *scire facias* to cancel patents, or to partition lands held in coparceny, and in other matters. From this court issued out commissions of bankruptcy, lunacy, relating to charities, etc. "Chancery (*Cancellaria*) is the Highest Court of Judicature in this Kingdom, next to the Parliament, and of very ancient Institution . . . . The Extraordinary Court or Court of Equity, proceeds by the Rules of Equity and Conscience, and moderates the Rigour of the Common Law, considering the intention rather than the words of the Law. It gives relief for and against Infants, notwithstanding their Minority: And for and against married Women, notwithstanding their Coverture . . . . All Frauds and Deceits, for which there is no Redress at Common Law; all Breach of Trust and Confidences; and Accidents, as to relieve Obligors, Mortgagors, &c., against Penalties and Forfeitures, where the Intent was to pay the Debt, are here remedied . . . . Also this Court will give relief against the Extremity of unreasonable Engagements, entered into without Consideration; oblige Creditors that are unreasonable to compound with an unfortunate Debtor: and make Executors &c., give security and pay interest for Money that is to Tie long in their hands (*Anon.* (1679) 2 Vent. 346). Here Executors may sue one another, or one Executor alone be sued without the rest: Order may be made for Performance of a Will: It may be decreed who shall have the Tuition of a Child. This Court may confirm Title to Lands, though one has lost his Writings; Render Conveyances defective through Mistake &c., good and perfect; but not Defects in a voluntary Conveyance, unless where intended as a Provision for younger Children (*Bonham* v. *Newcomb* (1684) 2 Vent. 365). In Chancery Copyholders may be relieved against the ill-Usage of their Lords. Inclosures of Lands that are Common be decreed; and this Court may decree Money or Lands given to charitable uses; Things in Action, upon Assignment on consideration: Oblige men to account with each other: Avoid the Bar of Actions, by the Statute of Limitations, &c., for Debts thus barred, are still Debts in Equity and the Duty remains (*Anon.* (1707) 1 Salk. 154). But in all cases, where the Plaintiff can have his Remedy at Law, he ought not to be relieved in Chancery: and a thing which may be tried by a Jury is not triable in this Court" (Jacob's Law Dictionary, *sub voce* Chancery).

(*l*) The jurisdiction of this court was civil and criminal. The civil jurisdiction was on what was called the plea side of the court. The civil jurisdiction, at first more limited, had become extended to all actions between subject and subject, except where the revenue of the Crown was affected, or where the title to realty was in question. On the plea side the court also exercised appellate jurisdiction from the palatinate courts, inferior courts of record, and from the Inclosure Commissioners (Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 4). The criminal jurisdiction, on the Crown side, extended to all offences of whatever nature, to articles of the peace, and to *habeas corpus*, also to *certiorari*, *mandamus*, and *quo warranto*. "King's Bench is the Court or Judgment Seat where the King of England was sometimes wont to sit in his own person; and was therefore moveable with the Court or King's Household, and called *Curia Domini Regis* or *Aula Regis*: and by Statute 28 Ed. 1, c. 5 this court is to follow the King. King Henry III. several times sat in person with the Judges in *Banco Regis*, being seated on a High Bench, and the Judges at a lower one at his feet. And the King's Bench was originally the only Court in Westminster Hall; out of which the Courts of Common Pleas and Exchequer seem to have been derived. . . . This Court is the *Custos morum* of all the subjects of the realm; and where it meets

Court of Common Pleas (*m*) at Westminster, the Court of Exchequer (*n*) (including its jurisdiction as a court of revenue), the High Court of Admiralty (*o*), the Court of Probate (*p*), the Court for Divorce and Matrimonial Causes (*q*), the London Court of Bankruptcy (*r*), the Court of Common Pleas at Lancaster (*s*), the

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with any offence contrary to the first principles of common Justice, may inflict a suitable punishment. 2 Hawk. P. C. 6, c. 3 " (Jacob's Law Dictionary, *sub voce* King's Bench).

(*m*) " Gwyn in the Preface of his Reading, says that till Henry III. granted the great Charter, there were but two Courts, called the King's Courts, viz., the King's Bench and the Exchequer . . . and that upon the Grant of that Charter, the Court of Common Pleas was erected and settled in one certain Place, *i.e.*, Westminster Hall. But Sir Edward Coke is of Opinion in his preface to the eighth Report, that the Court of Common Pleas was constituted before the Conquest, and was not created by Magna Charta, at which time there were *justiciarii de Banco, &c.* . . . The jurisdiction of this Court is general and extends itself throughout England : It holds pleas of all Civil Causes at Common Law, between subject and subject, in actions real personal and mixed " (see title ACTION, Vol. I., pp. 31 *et seq.*), " and it seems to have been the only Court for real causes. In personal and mixed actions it hath a concurrent jurisdiction with the King's Bench : But hath no cognizance of Pleas of the Crown ; and Common Pleas are all that are not such " (Jacob's Law Dictionary, *sub voce* Common Pleas). It was the court of appeal from revising barristers (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 60). It had also jurisdiction under the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 81, 83 ; the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), ss. 3, 4, 5 ; and as to election petitions under the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 5.

(*n*) This court had exclusive jurisdiction in matters affecting the revenue of the Crown. " Exchequer (M. E. Escheker, a. O. F. Eschequier . . . a chessboard). . . . The name originally referred to the table covered with a cloth divided into squares, on which the accounts of the Revenue were kept by means of counters . . . 3 (more fully Court of Exchequer, Exchequer of Pleas) a court of law, historically representing the Anglo-Norman exchequer in its judicial capacity. . . The jurisdiction of the Court was theoretically confined to matters of revenue, but in practice was gradually extended to all kinds of cases (except ' real actions ') by means of the legal fiction that the wrong suffered by the plaintiff had rendered him unable to pay his debts to the King " (New English Dictionary, Vol. III., E, p. 378). Up to 1842 it had also an equity side, but this was transferred to the High Court of Chancery by the Court of Chancery Act, 1841 (5 Vict. c. 5), s. 1.

(*o*) The High Court of Admiralty (constituted a court of record by the Admiralty Court Act, 1861 (24 & 25 Vict. c. 10), s. 14), had at the date of the Judicature Act lost its criminal jurisdiction except under the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90). Its civil jurisdiction extended to all maritime actions, whether *in rem* or *in personam*, and was equitable as well as legal, and appellate as well as original. This court had also jurisdiction as a prize court (Naval Prize Act, 1864 (27 & 28 Vict. c. 25)).

(*p*) The Court of Probate was established as a court of record by the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), and had jurisdiction to grant and revoke probates and letters of administration and to decide all questions in matters testamentary.

(*q*) This court was established as a court of record by the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), with exclusive jurisdiction in all causes, suits, and matters matrimonial.

(*r*) This court was established as a principal court of record by the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71). It was a court of equity as well as of law, and the chief judge possessed all the jurisdiction of a judge of one of the superior courts of common law, and of a judge of the High Court of Chancery, in addition to his special jurisdiction in bankruptcy. See p. 56, *post.*

(*s*) The Court of Common Pleas at Lancaster had within the county palatine a concurrent jurisdiction with the courts of common law in personal actions and in ejectment.

SECT. 2. His Majesty's High Court of Justice.

Court of Pleas at Durham (*a*), and the courts created by commissions of assize, of oyer and terminer, and of gaol delivery (*b*).

(ii.) *Original Jurisdiction.*

Original jurisdiction.

108. The jurisdiction of the High Court is both original and appellate. The original jurisdiction is general, and extends to all causes of action and is unlimited in amount (*c*). It includes the whole of the original jurisdiction of the courts before mentioned, except the jurisdiction in lunacy of the Lord Chancellor or the Lords Justices of Appeal in Chancery (*d*), the jurisdiction of the Lord Chancellor as to patents (*e*) and commissions, or as the visitor of any college or foundation, and that of the Master of the Rolls as to records (*f*). The court has also jurisdiction to grant a mandamus or an injunction or to appoint a receiver by an interlocutory order (*g*). The effect of the Judicature Acts, and the rules made under them, is not (except as expressed) to alter the jurisdiction of the High Court as transferred thereto by the Act of 1873 (*h*).

The civil jurisdiction of the High Court includes all causes and matters whatever, except prize causes (*i*), certain excepted lunacy matters (*j*), and actions within a franchise of cognisance of pleas, but only where the lord of the franchise claims his right (*k*).

The court also exercises the functions of the King as visitor of all civil corporations, and thus has jurisdiction to relieve any freeman in city, borough, or town corporate, who is unjustly disfranchised (*l*).

The jurisdiction of the Probate, Divorce, and Admiralty Division in admiralty, matrimonial and succession matters is dealt with elsewhere (*m*).

The trial of parliamentary election petitions is conducted before two judges of the King's Bench Division selected from a rota appointed annually (*n*). The court has also jurisdiction as to municipal election petitions (*o*).

Divisional courts.

109. Divisional courts have original jurisdiction in cases of *habeas corpus*, where the judge directs the rule *nisi* or the writ to be

(*a*) This court had similar jurisdiction within the county palatine of Durham as the last-mentioned court had in Lancaster.

(*b*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16.

(*c*) As to remission to the county court of actions commenced in the High Court, see titles COUNTY COURTS, Vol. VIII., p. 438; PRACTICE AND PROCEDURE.

(*d*) See p. 94, *post*.

(*e*) See title PATENTS AND INVENTIONS.

(*f*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 17.

(*g*) *Ibid.*, s. 25 (8).

(*h*) *British South Africa Co.* v. *Companhia de Moçambique*, [1893] A. C. 602.

(*i*) See p. 28, *ante*; and title PRIZE LAW AND JURISDICTION.

(*j*) See p. 94, *post*.

(*k*) *Neal* v. *Deucton* (1663), 1 Lev. 89.

(*l*) 4 Co. Inst. 71.

(*m*) See pp. 59, 62, *post*; and titles ADMIRALTY, Vol. I., p. 63; CONFLICT OF LAWS, Vol. VI., pp. 218, 262; HUSBAND AND WIFE.

(*n*) Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125); Parliamentary and Corrupt Practices Act, 1879 (42 & 43 Vict. c. 75); Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 13.

(*o*) See title ELECTIONS.

returnable there, in special cases under the London Government Act, 1899 (*p*), and in applications to strike solicitors off the rolls (*q*).

Criminal jurisdiction.

110. The original criminal jurisdiction of the High Court extends over all indictable offences against the law of England, and is exercised either in the King's Bench Division or under the commissions of oyer and terminer and gaol delivery (*r*) on circuit, at the Central Criminal Court (*s*), or directed to special commissioners (*t*).

In the case of criminal informations (*u*), whether by the Attorney-General *ex-officio* or on relation, or to enforce a pecuniary penalty in which the informer as well as the Crown has an interest, the criminal jurisdiction of the High Court is only exercised in the King's Bench Division.

Where on application an indictment has been removed into the King's Bench Division for trial (*v*), or where an indictment is found by the grand jury in the King's Bench Division (*x*), the King's Bench Division has exclusive jurisdiction to try the cause.

The trial in the King's Bench Division is held before one judge, unless on motion an order has been made by the court that the trial shall be at bar (*a*).

Offences by public officers abroad.

111. Offences by Colonial Governors (*b*) and other public officers abroad (*c*) are triable in the King's Bench Division, either on information exhibited by the Attorney-General or upon indictment found in the division; as are also offences committed by the Governor-General of India, Lieutenant-Governors, Justices of the High Courts, and other public officers in India. Extortion and other misdemeanours committed by public officers in India are also triable in the King's Bench Division (*d*), if the Attorney-General or the other prosecutors elect to proceed therein instead of claiming a trial before the special commission which has jurisdiction in such cases (*e*).

(*p*) 62 & 63 Vict. c. 14. For *hàbeas corpus* and other matters in which there is original jurisdiction, see title CROWN PRACTICE.

(*q*) R. S. C., Ord. 59, rr. 1, 2. See title SOLICITORS.

(*r*) See p. 87, *post*.

(*s*) The Central Criminal Court is a branch of the High Court of Justice (Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 29; *R.* v. *Parke*, [1903] 2 K. B. 432, 439; see p. 87, *post*).

(*t*) See p. 90, *post*.

(*u*) See title CRIMINAL LAW AND PROCEDURE, p. 292, *post*.

(*v*) Crown Office Rules, 1906, rr. 12—19; Statutory Rules and Orders, 1906, pp. 606—608.

(*x*) Middlesex Grand Juries Act, 1872 (35 & 36 Vict. c. 52); Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 89 (2) (3); Crown Office Rules, 1906, rr. 32—34; Statutory Rules and Orders, 1906, pp. 610—612.

(*a*) Crown Office Rules, 1906, rr. 150—155; Statutory Rules and Orders, 1906, p. 627.

(*b*) 11 Will. 3, c. 12 (11 & 12 Will. 3, in Ruffhead).

(*c*) Criminal Jurisdiction Act, 1802 (42 Geo. 3, c. 85).

(*d*) East India Company Act, 1770 (10 Geo. 3, c. 47), s. 4; East India Company Act, 1773; (13 Geo. 3, c. 63), ss. 33, 39—41; East India Company Act, 1780 (21 Geo. 3, c. 70), ss. 4—7; East India Company Act, 1793 (33 Geo. 3, c. 52), ss. 140, 141; East India Company Act, 1797 (37 Geo. 3, c. 142), s. 14.

(*e*) East India Company Act, 1784 (24 Geo. 3, sess. 2, c. 25); East India Company Act, 1786 (26 Geo. 3, c. 57), s. 25.

SECT. 2. His Majesty's High Court of Justice.

112. The King's Bench Division has also jurisdiction to try persons accused of wilfully neglecting or delaying to deliver parliamentary writs (*f*).

Offences overseas.

113. The criminal jurisdiction of the High Court also extends over offences committed within the jurisdiction of the Admiral of England (*g*), and can be exercised either at the Central Criminal Court (*h*) or under commissions of oyer and terminer and gaol delivery (*i*).

Bankruptcy.

114. In Bankruptcy the jurisdiction of the High Court is both original and appellate. The original jurisdiction extends to those cases in which it is proposed to present a petition against a debtor who has resided or carried on business within the London bankruptcy district, *i.e.*, the City of London and the districts of the Metropolitan County Courts (*k*), for the greater part of the six months immediately preceding the presentation of the petition, or for a longer period during those six months than in the district of any county court, or who is not resident in England, or whose residence the petitioning creditor is unable to ascertain (*l*).

An appeal lies in bankruptcy matters, at the instance of any person aggrieved, from the order of a county court to a divisional court of the High Court of Justice, of which the judge to whom bankruptcy business is for the time being assigned is to be a member. The decision of such divisional court is final and conclusive, unless the divisional court or the Court of Appeal give special leave to appeal to the Court of Appeal, whose decision in such a case is final and conclusive (*m*).

Winding-up.

115. In company winding-up matters, the High Court has also original and appellate jurisdiction. The original jurisdiction applies to cases where the amount of the share capital of the company paid up or credited as paid up exceeds £10,000, except that in cases where the registered office of the company is situated within the jurisdiction of either of the Chancery courts of the counties palatine of Lancaster or Durham such Chancery court has concurrent jurisdiction (*n*), and except in cases of companies formed for working mines within the stannaries, which are not shown to be actually working mines nor to be engaged in any other undertaking beyond those limits (*o*).

(*f*) Parliamentary Writs Act, 1813 (53 Geo. 3, c. 89), s. 6.

(*g*) Under the Admiralty Offences Act, 1844 (7 & 8 Vict. c. 2), ss. 1, 2; see p. 90, *post*.

(*h*) See p. 87, *post*.

(*i*) Under the Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), s. 22; Admiralty Offences Act, 1844 (7 & 8 Vict. c. 2), s. 4; see p. 87, *post*.

(*k*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 96, Sched. 3. The Metropolitan County Courts are Bloomsbury, Bow, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, West London, Westminster, and Whitechapel.

(*l*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 95.

(*m*) Bankruptcy Appeals (County Courts) Act, 1884 (47 & 48 Vict. c. 9), s. 2; see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 301.

(*n*) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 131 (2).

(*o*) *Ibid.*, s. 131 (4).

Admiralty.

116. The admiralty jurisdiction of the High Court (*p*) includes the original jurisdiction of the High Court of Admiralty and also additional jurisdiction conferred by statute. It has jurisdiction to try suits of possession (*q*); questions between co-owners (*r*); disputes as to mortgages (*s*); bottomry and respondentia (*t*); claims for necessaries (*u*); claims for towage (*x*); wages, master's wages and disbursements (*a*); collisions (*b*); damage to cargo (*c*); limitation of liability (*d*); salvage (*e*); droits of admiralty (*f*); forfeiture (*g*); booty of war (*h*); prize (*i*); slave trade (*k*); claims for payment of substitutes for seamen volunteering into the Navy (*l*).

(iii.) *Service out of the Jurisdiction.*

Right to serve out of jurisdiction.

117. As to service out of the jurisdiction there is no absolute right to such service in any case, but it is a question for the exercise of his discretion by the judge (*m*), and, in exercising such discretion, the judge should consider all the circumstances of the case and affidavits relating to the facts of the case, so far as may be necessary to see whether the plaintiff has a probable cause of action or not (*n*).

The kinds of process which can be served out of the jurisdiction are writs or notices of writs; third party notices and counterclaims.

When may be allowed.

118. The cases in which service out of jurisdiction (*o*) may be allowed are the following: Whenever (1) the whole subject-matter

(*p*) As to this jurisdiction, see title ADMIRALTY, Vol. I., pp. 63—79.

(*q*) Original jurisdiction of the High Court of Admiralty, extended by Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 4.

(*r*) Original jurisdiction.

(*s*) Admiralty Court Act, 1840 (3 & 4 Vict. c. 65); Admiralty Court Act, 1861 (24 Vict. c. 10), s. 11.

(*t*) Original jurisdiction. Bottomry is where the ship and cargo are hypothecated; Respondentia, where only the cargo is hypothecated.

(*u*) Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 6; Admiralty Court Act, 1861 (24 Vict. c. 10), s. 5.

(*x*) Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 6, increasing original jurisdiction.

(*a*) Original jurisdiction increased by Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 4; Admiralty Court Act, 1861 (24 Vict. c. 10), ss. 10, 35; Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 165, 167, 168; Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), s. 57.

(*b*) Original jurisdiction, increased by Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 6; Admiralty Court Act, 1861 (24 Vict. c. 10), s. 7.

(*c*) Admiralty Court Act, 1861 (24 Vict. c. 10), s. 6.

(*d*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 502—504; Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), ss. 69, 70, 71.

(*e*) Original jurisdiction, increased by Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 544—565.

(*f*) See title ADMIRALTY, Vol. I., pp. 76 *et seq.*

(*g*) Original jurisdiction.

(*h*) Original jurisdiction.

(*i*) Admiralty Court Act, 1840 (3 & 4 Vict. c. 65), s. 22.

(*k*) Naval Prize Act, 1864 (27 & 28 Vict. c. 25), s. 52.

(*l*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 195, 197.

(*m*) *Société Générale de Paris* v. *Dreyfus Brothers* (1887), 37 Ch. D. 215, C. A.; *Re De Penny, De Penny* v. *Christie*, [1891] 2 Ch. 63; *Strauss* v. *Goldschmid* (1892), 8 T. L. R. 512, C. A.; *Plaskitt* v. *Eddis* (1898), 79 L. T. 136.

(*n*) *Société Générale de Paris* v. *Dreyfus*, *supra*, at p. 225.

(*o*) R. S. C., Ord. 11, r. 1; and see, generally, title PRACTICE AND PROCEDURE.

SECT. 2. His Majesty's High Court of Justice.

of the action is land situate within the jurisdiction (with or without rents and profits); (2) any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced by the action; (3) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; (4) the action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of England; (5) the action is founded on a breach or alleged breach of a contract, wherever made, which, by its terms, ought to be performed within the jurisdiction, unless the defendant is domiciled or ordinarily resident in Scotland or Ireland; (6) an injunction is sought as to anything to be done within the jurisdiction, or a nuisance within the jurisdiction is sought to be prevented or removed, whether damages are claimed or not; (7) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served in the jurisdiction.

Where it is sought to serve a writ in Scotland or Ireland, and it appears that there is a concurrent jurisdiction in Scotland or Ireland, as the case may be, the court or judge must have regard to the comparative cost and convenience of proceeding in England or in Scotland or Ireland, and in cases of small demands to the powers and jurisdiction of the sheriffs' courts or small debts courts in Scotland and of the civil bill courts in Ireland (*p*).

In probate actions a writ of summons or notice thereof may, by leave of the judge, be served out of the jurisdiction (*q*).

Application for leave.

119. The application for leave to serve out of the jurisdiction must be supported by an affidavit, or other evidence, stating that, in the belief of the deponent, the plaintiff has a good cause of action, showing in what place or country the defendant is or may probably be found, stating whether the defendant is a British subject or not, and the grounds on which the application is made. No such leave must be granted unless it is made sufficiently to appear that it is a proper case for service out of the jurisdiction (*r*).

Where the defendant is neither a British subject nor in British dominions notice of the writ, and not the writ itself, is to be served on him (*s*).

(*p*) R. S. C., Ord. 11, r. 2. This provision does not apply to actions for breach of contract, in which actions, if the defendant is domiciled or ordinarily resident in Scotland or Ireland, he cannot be served out of the jurisdiction (*Lenders* v. *Anderson* (1883), 12 Q. B. D. 50).

(*q*) R. S. C., Ord. 11, r. 3; and see title PRACTICE AND PROCEDURE.

(*r*) *Ibid.*, r. 4.

(*s*) *Ibid.*, r. 6. Particular rules (R. S. C., Ord. 11, r. 8) apply to service of notice of a writ of summons in the case of countries to which they have been applied by order of the Lord Chancellor. These countries are the German Empire (Order, 4th July, 1904, [1904] W. N., Pt. II., p. 231), and the Russian Empire (Order, 21st March, [1906] W. N., Pt. II., p. 99). It is proposed to apply these rules to orders and notices directed to be served on any person in a foreign country; see draft R. S. C., July, 1909 (127 L. T. Jo. 278). See also title PRACTICE AND PROCEDURE.

(iv.) *Appellate Jurisdiction.*

SECT. 2. HIS MAJESTY'S HIGH COURT OF JUSTICE.

120. The appellate jurisdiction is exercised in some cases by divisional courts consisting of two, or sometimes three, judges sitting either in the King's Bench Division or the Probate, Divorce and Admiralty Division, and in others by a single judge.

How exercised.

121. To divisional courts of the King's Bench Division come (*t*) appeals from county courts (*u*) and other inferior courts (*x*) and proceedings on the Crown side of the King's Bench Division (*y*), appeals from orders made by the judge of the King's Bench Division sitting in chambers in matters not relating to practice and procedure (*z*), from decisions of revising barristers (*a*), on cases stated by the Railway Commissioners (*b*), by midwives whose names have been removed from the roll (*c*), motions to set aside the award in an arbitration (*d*), or the decision of a master of the Supreme Court or official referee to whom an action has been referred (*e*).

From inferior courts.

122. To a divisional court of the Probate, Divorce and Admiralty Division come appeals from county courts in admiralty (*f*) and probate cases (*g*), and from courts of summary jurisdiction under the Summary Jurisdiction (Married Women) Act, 1895 (*h*). Also appeals from the decision of any tribunal cancelling or suspending the certificate of a master, mate, or engineer, on an investigation into his conduct, or into a shipping casualty (*i*).

Admiralty, probate and matrimonial cases.

123. The appellate jurisdiction of a single judge is exercised in the case of appeals from decisions of the Inland Revenue Commissioners (*j*); appeals to the judge in bankruptcy from the Board of Trade, official receiver, or trustee (*k*); appeals from orders made by the masters in chambers and district registrars in the King's Bench

Revenue cases etc.

(*t*) See R. S. C., Ord. 59, r. 1.
(*u*) See title COUNTY COURTS, Vol. VIII., p. 607.
(*x*) See p. 133, *post*.
(*y*) This includes applications for a prerogative writ of mandamus, for *certiorari* (either as appeal from a court of summary jurisdiction, or to transfer an action from an inferior court of record), for *quo warranto*, or prohibition, also assignments of error on outlawry.
(*z*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 50; Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1 (4).
(*a*) Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 42, 43; Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 3, 16, 31, 34.
(*b*) All proceedings for review of a decision of the Commissioners are by appeal to the Court of Appeal (Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 17 (2).
(*c*) Midwives Act, 1902 (2 Edw. 7, c. 17), s. 4.
(*d*) R. S. C., Ord. 40, r. 6; Ord. 52, rr. 1—3.
(*e*) *Fraser* v. *Fraser*, [1905] 1 K. B. 368, C. A.
(*f*) County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 26. See title ADMIRALTY, Vol. I., p. 112.
(*g*) Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 58.
(*h*) 58 & 59 Vict. c. 39, s. 11; see R. S. C., Ord. 59, r. 4A, which still applies to such appeals.
(*i*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 475.
(*j*) In consequence of R. S. C., Ord. 59, r. 1 (d), being annulled by R. S. C., July, 1901, r. 8.
(*k*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 90, 139.

SECT. 2. His Majesty's High Court of Justice.

Division or by the registrars in the Probate, Divorce and Admiralty Division; appeals to the judge to whom company matters are assigned from the Board of Trade, official receiver, or liquidator (*l*); appeals to the judge to whom patent business (*m*) is assigned (*n*) from decisions of the comptroller (*o*) as to the revocation of patents.

Winding-up.

124. The appellate jurisdiction of the High Court extends to appeals from orders made or decisions given by a county court having jurisdiction in company winding-up in the same manner and to the same extent as in the case of orders and decisions of the county court within its ordinary jurisdiction (*p*).

SUB-SECT. 2.—*Constitution.*

Constitution.

125. The High Court was at first divided into five divisions, namely, the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce and Admiralty Division (*q*). Power, however, was given to alter these divisions (*r*) by Order in Council, in pursuance of which the Queen's Bench, Common Pleas, and Exchequer Divisions were consolidated into the Queen's (now King's) Bench Division by an Order in Council of 16th December, 1880 (*s*).

SUB-SECT. 3.—*The Chancery Division.*

Lord Chancellor.

126. The Lord High Chancellor of Great Britain (*t*) is the president of the division, of which there are six other justices.

Jurisdiction.

127. To the Chancery Division are assigned all causes and matters in which the Court of Chancery or any judge thereof had exclusive jurisdiction before the Judicature Act, 1873 (*u*), administration

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(*l*) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), ss. 158, 224.

(*m*) The Patents and Designs Act, 1907 (7 Edw. 7, c. 29), ss. 24, 25, has transferred to the High Court the former jurisdiction of the Judicial Committee in respect of the extension of the term of patents, of compulsory licences for their use, and re scission of patents on the ground that the reasonable requirements of the public have not been satisfied.

(*n*) Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 92.

(*o*) *Ibid.*, s. 26.

(*p*) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 181; see title COMPANIES, Vol. V.

(*q*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 31.

(*r*) *Ibid.*, s. 32.

(*s*) Statutory Rules and Orders Revised, Vol. XII., Supreme Court, England, p. 1.

(*t*) For the duties etc. of the Lord Chancellor, see title CONSTITUTIONAL LAW, Vol. VII., p. 55.

(*u*) 36 & 37 Vict. c. 66; see s. 34. To the High Court of Chancery exclusive jurisdiction was given by a large number of Acts, including Cestui que vie Act (6 Ann. c. 18); Legacy Duty Act, 1796 (36 Geo. 3, c. 52); Land Tax Redemption Act, 1802 (42 Geo. 3, c. 116); Infants Property Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 65); Infant Felons Act, 1840 (3 & 4 Vict. c. 90); Ecclesiastical Houses of Residence Act, 1842 (5 & 6 Vict. c. 26); Solicitors Act, 1843 (6 & 7 Vict. c. 73); Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18). ss. 69—87; Drainage and Improvement of Land Acts, 1845 to 1864 (8 & 9 Vict. c. 56; 10 & 11 Vict. cc. 11, 38; 11 & 12 Vict. c. 119; 13 & 14 Vict. c. 31; 19 & 20 Vict. c. 9; 27 & 28 Vict. c. 114); Limited Owners Residences Act, 1870 (33 & 34 Vict. 56); Parliamentary Deposits Act, 1846 (9 & 10 Vict. c. 20); Trustee Relief Acts and Trustee Acts (now repealed and consolidated by Trustee Act, 1893

actions, partnership actions, actions for redemption and foreclosure of mortgages, matters relating to charges on land, sale and distribution of the proceeds of property subject to any lien or charge, trusts, the rectification or cancellation of deeds, specific performance, partition and sale of real estates, matters relating to infants (*a*), and the jurisdiction under the Conveyancing (*b*) and Settled Land Acts (*c*), Vendor and Purchaser Act (*d*), and also applications for the determination of disputes as to the apportionment of estate duty (*e*), proceedings under the Technical and Industrial Institutions Act, 1892 (*f*), Land Transfer Acts, 1875 and 1897 (*g*), and the Public Trustee Act, 1906 (*h*).

Winding-up of companies.

Under the Companies (Consolidation) Act, 1908 (*i*), the Lord Chancellor has power to assign the winding-up of companies either to a judge of the Chancery Division or to the judge of the High Court exercising jurisdiction in bankruptcy (*k*).

SUB-SECT. 4.—*The King's Bench Division.*

Lord Chief Justice.

128. The Lord Chief Justice of England is the president of this division, of which there are fifteen (*l*) other justices.

Jurisdiction.

129. To the King's Bench Division are assigned all causes and matters, civil or criminal, which would have been within the exclusive jurisdiction (*m*) of the Courts of Queen's Bench, Common Pleas at Westminster, and Exchequer (*n*) if their jurisdiction had not been transferred to the High Court.

The Lord Chancellor may from time to time assign bankruptcy

(56 & 57 Vict. c. 53); Charitable Trusts Acts, 1853, 1855, 1869 (16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 32 & 33 Vict. c. 110); Land Registry Act, 1862 (25 & 26 Vict. c. 53); Infants' Settlements Act, 1855 (18 & 19 Vict. c. 43); Declaration of Title Act, 1862 (25 & 26 Vict. c. 67); Judgments Act, 1864 (27 & 28 Vict. c. 112); Mortgage Debenture Act, 1865 (28 & 29 Vict. c. 78); Railway Companies Act, 1867 (30 & 31 Vict. c. 127); Metropolitan Board of Works Loans Act, 1869 (32 & 33 Vict. c. 102); and National Debt Act, 1870 (33 & 34 Vict. c. 71). See also Yearly Practice, 1909, p. 1288, and Daniel, Chancery Practice, 5th ed., pp. 1757—1922, for the exclusive statutory jurisdiction of the Chancery Division.

(*a*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 34.

(*b*) Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), ss. 2 (xviii.), 69 (1).

(*c*) Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 46.

(*d*) Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78).

(*e*) Finance Act, 1894 (57 & 58 Vict. c. 30), s. 14 (2); R. S. C., Ord. 55, r. 9c.

(*f*) 55 & 56 Vict. c. 29, s. 7 (2).

(*g*) 38 & 39 Vict. c. 87; 60 & 61 Vict. c. 65.

(*h*) 6 Edw. 7, c. 55.

(*i*) 8 Edw. 7, c. 69, s. 132. See title COMPANIES, Vol. V.

(*k*) See p. 62, *post*.

(*l*) Increased from fourteen in 1907 on an address from both Houses of Parliament under s. 18 of the Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59).

(*m*) See notes (*l*), (*m*), (*n*) on pp. 52 and 53.

(*n*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 34. By an Order in Council of 16th December, 1880, the Queen's Bench, Common Pleas, and Exchequer Divisions were consolidated, and the offices of Chief Justice of the Common Pleas and Chief Baron were abolished (Statutory Rules and Orders Revised, 1904, Vol. XII., Supreme Court, England, p. 1).

SECT. 2. His Majesty's High Court of Justice.

business to the King's Bench Division and to a specified judge (*o*), and may assign the business of the winding-up of companies (*a*) to this judge or to a judge or judges of the Chancery Division.

SUB-SECT. 5.—*The Probate, Divorce and Admiralty Division.*

President.

130. The division is presided over by the President of the Probate, Divorce and Admiralty Division (*b*), and there is one other judge of the division (*c*).

Jurisdiction.

131. To the Probate, Divorce and Admiralty Division are assigned all causes and matters over which the Court of Probate and the Court for Divorce and Matrimonial Causes would have had exclusive jurisdiction (*d*) if their jurisdiction had not been transferred to the High Court (*e*).

SUB-SECT. 6.—*The Judges.*

The judges of the High Court.

132. The judges of the High Court are the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Division, and twenty-two puisne judges. In the absence of the Lord Chancellor the Lord Chief Justice of England is president of the High Court.

Appointment and tenure.

The appointment of judges is by the Crown by letters patent (*f*). The qualification for a judge of the High Court is to be a barrister of not less than ten years' standing (*g*). Every judge of the High Court holds his office during good behaviour, and is only removable on an address to the Crown by both Houses of Parliament (*h*).

The Lord Chief Justice has a salary of 8,000*l.* a year (*i*), and the other judges £5,000, together with an allowance of seven guineas a day for their expenses on circuit. After fifteen years' service or on being disabled by permanent infirmity, judges may retire on a pension, in the case of the Lord Chief Justice of £4,000, and in the case of other judges of £3,500 a year (*k*).

SECT. 3.—*His Majesty's Court of Appeal.*

SUB-SECT. 1.—*Jurisdiction.*

Transferred jurisdiction.

133. There is transferred to the Court of Appeal the jurisdiction formerly possessed by the Lord Chancellor and by the Court of Appeal in Chancery, including its jurisdiction as a court of appeal in bankruptcy, by the Court of Appeal in Chancery of Lancaster,

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(*o*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 94.
(*a*) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 132.
(*b*) There is some doubt as to the legality of this title; see note (*l*) on p. 64, *post*.
(*c*) See titles ADMIRALTY, Vol. I., p. 59; HUSBAND AND WIFE; WILLS.
(*d*) See notes (*o*), (*p*), (*q*) on p. 53, *ante*.
(*e*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 34.
(*f*) *Ibid.*, s. 5.
(*g*) *Ibid.*, s. 8; and see title BARRISTERS, Vol. II., p. 381.
(*h*) Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 5.
(*i*) Chief Justice's Salary Act, 1851 (14 & 15 Vict. c. 41).
(*k*) Judges' Pension Acts, 1799, 1813, 1825 (39 Geo. 3, c. 110; 53 Geo. 3, c. 153; 6 Geo. 4, c. 84); Chief Justice's Pension Act, 1825 (6 Geo. 4, c. 82).

and by the Chancellor of Lancaster both when sitting alone and when sitting with the Lords Justices of Appeal in Chancery on appeals from the Court of Chancery of Lancaster, by the Lord Warden of the Stannaries, by the Exchequer Chamber (*l*), by the Judicial Committee of the Privy Council on appeals from the High Court of Admiralty, or from Orders in Lunacy.

Original jurisdiction.

134. The original jurisdiction of the Court of Appeal is very limited; it appears only to extend to making an order for the protection of property (*m*), granting an injunction pending an appeal either to (*n*) or from (*o*) the Court of Appeal where an action has been dismissed, and to making an order to extend time. The Court of Appeal can also hear an original application to strike a solicitor off the rolls (*p*), and has power to make orders as to costs in the case of appeals, and as to security for the costs of appeals.

Appellate jurisdiction.

135. The appellate jurisdiction of the Court of Appeal includes appeals from a judge in chambers in matters relating to practice and procedure (*q*); appeals from decisions of a divisional court on appeal from an inferior court, or other person (but only by leave of the divisional court or Court of Appeal) (*r*); appeals from divisional courts when exercising original jurisdiction, without leave; generally from all orders and judgments of the High Court or of any judge or judges thereof (*s*); motions for new trials; appeals under the Taxes Management Act, 1880 (*t*); appeals as to the Bombay Civil Fund (*a*); appeals under the Workmen's Compensation Act, 1906 (*b*); appeals under the Agricultural Holdings Act, 1908 (*c*); appeals from Orders in Lunacy (*d*); appeals from the Chancery Court of Lancaster; appeals from the Chancery Court of Durham; appeals from the county court of Cornwall in its stannaries jurisdiction; applications for a new trial of an issue tried in the Liverpool Court of Passage, and appeals from that court on issues tried therein, and from judgments in actions tried therein (*e*); also appeals from decisions of the Railway

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(*l*) Error from any one of the superior courts of common law lay to the judges of the other two courts sitting in Exchequer Chamber (Law Terms Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 70), s. 8).

(*m*) *Hyde* v. *Worden* (1876), 1 Ex. D. 309, C. A.

(*n*) *Wilson* v. *Church* (1879), 11 Ch. D. 576, C. A.

(*o*) *Polini* v. *Gray* (1879), 12 Ch. D. 438, C. A.

(*p*) *Re Whitehead* (1885), 28 Ch. D. 614, C. A.; see *per* BAGGALLAY, L.J., at p. 617. It must be observed that this case was before the Solicitors Act, 1888 (51 & 52 Vict. c. 65).

(*q*) Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1 (4).

(*r*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 45; Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16), s. 1 (5). See also *Wynne-Finch* v. *Chaytor*, [1903] 2 Ch. 475, 484, C. A.

(*s*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 19.

(*t*) 43 & 44 Vict. c. 19, s. 59 (3).

(*a*) Bombay Civil Fund Act, 1882 (45 & 46 Vict. c. 45), s. 5.

(*b*) 6 Edw. 7, c. 58, Sched. II. (4).

(*c*) 8 Edw. 7, c. 28, s. 13.

(*d*) *Re Cathcart*, [1893] 1 Ch. 466, C. A.; *Re Cathcart*, [1902] W. N. 80, C. A.

(*e*) Liverpool Court of Passage Act, 1893 (56 & 57 Vict. c. 37), s. 10; *Coats* v. *Moore*, [1903] 2 K. B. 140, C. A.; *Anderson* v. *Dean*, [1894] 2 Q. B. 222, C. A.

SECT. 3. His Majesty's Court of Appeal.

Commissioners, except as to questions of fact or the *locus standi* of a complainant (*f*); and on questions of law arising upon the records of the London Mayor's Court (*g*).

SUB-SECT. 2.—*Organisation.*

Constitution of Court of Appeal.

136. The Court of Appeal usually sits in two divisions, one of which hears appeals from the King's Bench and Probate, Divorce and Admiralty Divisions, and the other from the Chancery Division (*h*). The Court of Appeal is empowered to sit in three divisions at the same time (*h*).

In interlocutory matters two judges of the Court of Appeal constitute a court, but in final matters three are required (*i*); by consent of the parties, however, such appeals may be heard by two judges only, but if the two judges differ in opinion the case must be re-argued before three judges before appeal to the House of Lords (*k*).

SUB-SECT. 3.—*Judges.*

Judges of Court of Appeal.

137. The Court of Appeal at present consists of the Lord Chancellor, who is the president of the court, the Lord Chief Justice of England, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Division (*l*) (these are *ex-officio* judges), and five ordinary members of the court, entitled Lords Justices of Appeal. Ex-Lord Chancellors of Great Britain are also *ex-officio* members of the Court of Appeal (*m*).

The qualification for a Lord Justice of Appeal is to be a barrister of fifteen years' standing or to have been a judge of the High Court for not less than a year (*n*).

The Lord Chancellor may also request the attendance at any time of any judge of the High Court to sit as an additional judge at the sittings of the Court of Appeal, and any judge whose attendance is so requested must attend accordingly. Every judge so attending is to be deemed an additional judge of the Court of Appeal (*o*).

Every judge of the Court of Appeal holds his office during good behaviour, and is only removable on an address to the Crown by both Houses of Parliament (*p*).

The Master of the Rolls has a salary of £6,000 a year (*q*), and the Lords Justices of £5,000 (*r*). On resignation the pension of

(*f*) Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 17 (1), (2).
(*g*) *Le Blanch* v. *Reuter's Telegram Co., Ltd.* (1876), 1 Ex. D. 408.
(*h*) Judicature Act, 1902 (2 Edw. 7, c. 31), s. 1.
(*i*) Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 12.
(*k*) Judicature Act, 1899 (62 Vict. c. 6), s. 1.
(*l*) As to this title, see Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 4; Judicature Act, 1881 (44 & 45 Vict. c. 68), ss. 4, 8; and Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 3.
(*m*) Judicature Act, 1891 (54 & 55 Vict. c. 53), s. 1.
(*n*) Court of Chancery Act, 1851 (14 & 15 Vict. c. 83), s. 1; Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 8.
(*o*) Appellate Jurisdiction Act, 1908 (8 Edw. 7, c. 51), s. 6.
(*p*) Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 5.
(*q*) Court of Chancery Act, 1851 (14 & 15 Vict. c. 83), s. 18.
(*r*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 13.

the Master of the Rolls is £3,750 (*s*) and of the Lords Justices £3,500 (*t*).

SECT. 3. His Majesty's Court of Appeal.

SECT. 4.—*Rules and Procedure.*

Power to make rules.

138. A council of the judges of the Supreme Court must assemble at least once in each year to consider procedure and the administration of justice (*u*). The power of making rules to regulate the practice and procedure of the Supreme Court was at first vested in the Lord Chancellor and certain other judges (*a*), but in 1881 this power was transferred to the present Rule Committee (*b*), which consists of the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Division, and four other judges appointed by the Lord Chancellor. Rules may be made by any five members of the Rule Committee, of whom the Lord Chancellor must be one. The President and judges of the Court of Appeal have power to make regulations as to the conduct of business in the Court of Appeal (*c*). Rules of court made by the Rule Committee must be laid before both Houses of Parliament within forty days if Parliament is sitting, and if not, within forty days of the beginning of the next sitting. There is also power to annul any rules by Order in Council on an address from either House (*d*).

Under the above powers the Rules of the Supreme Court, 1883, have been made, and since amended and added to by many sets of subsequent rules (*e*).

There are many other rule-making powers contained in different statutes relating to particular subjects (*f*). Practice rules are also made by the masters; these, however, are not made under any statutory power.

The procedure of the court in criminal proceedings is regulated by the Crown Office Rules, 1906 (*g*).

(*s*) Judge's Pensions Acts, 1799, 1813, 1825 (39 Geo. 3, c. 110; 53 Geo. 3, c. 153; 6 Geo. 4, c. 84).

(*t*) *Ibid.*

(*u*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 75. This enactment, however, appears only to have been carried into effect occasionally; see Chitty's Statutes, Vol. VI., Judicature, p. 28 (n.), and Yearly Supreme Court Practice, 1909, p. 1310.

(*a*) Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 17; Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 17.

(*b*) Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 19.

(*c*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 16.

(*d*) Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 25.

(*e*) For the procedure of the Supreme Court, see title PRACTICE AND PROCEDURE.

(*f*) Rules have been made relating to the following subjects:—Acknowledgments by married women; Finance Act, 1895; bankruptcy; bills of sale; filing etc. of powers of attorney; charitable trusts recovery; reduction of capital cases; deeds of arrangement; Divorce Rules; Probate Rules; *commissions rogatoires;* guardianship of infants; Judgments Extension Act, 1868; London and Middlesex juries; Merchant Shipping Act, 1894; election petitions; Part VI. of the Municipal Corporations Act, 1882; life assurance companies; searches for judgments etc.; settled estates; settled land; questions as to transfer of powers under Local Government Acts, 1880 and 1894, and London Government Act, 1899; West Riding of Yorkshire rivers. The rules themselves will be found in the Yearly Supreme Court Practice, 1909.

(*g*) Statutory Rules and Orders, 1906, pp. 605—733.

SECT. 5. Officers and Central Office.

SECT. 5.—*Officers and Central Office.*

SUB-SECT. 1.—*Official Referees.*

Official referees.

139. Official referees are (*h*) permanent officers attached to the Supreme Court for the purpose of acting as arbitrators under submissions to them (*i*), or of inquiring into and reporting on any question arising in a cause or matter referred to them by a judge (*j*), or of trying causes or matters referred to them for trial (*k*). Three of these officers are appointed; the qualification is that they should be either barristers or solicitors of ten years' standing (*l*).

Rules have been made in regard to the powers and duties of official referees (*m*).

SUB-SECT. 2.—*Examiners.*

Examiners.

140. A sufficient number of barristers-at-law, of not less than three years' standing, are appointed by the Lord Chancellor to act as examiners of the court for five years. Their duties are to take examinations under orders of the court in all divisions of the High Court, except in admiralty actions (*n*). Examinations are distributed among them in rotation (*o*). They are paid by fees which are prescribed by rules of the Supreme Court (*p*). In determining the place and time of examinations the convenience of the witnesses and the circumstances of the case are to be considered (*q*).

Special examiners may also be appointed to take the evidence of any witness at any place (*r*).

SUB-SECT. 3.—*Masters of the Supreme Court.*

(i.) *King's Bench Division.*

Masters in King's Bench Division.

141. There are seven masters of the Supreme Court (King's Bench Division). Of these the senior master is the King's Remembrancer (*s*). The office of King's Coroner and Master of the Crown Office is held by a master (at present the senior master) under appointment by the Lord Chief Justice (*t*).

Assistant masters.

There are also two assistant masters, one of whom is attached to the Crown Office, and the other to the Court Orders and Associates Department of the Crown Office.

(*h*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 83.
(*i*) Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 3.
(*j*) *Ibid.*, s. 13.
(*k*) *Ibid.*, s. 14.
(*l*) Letter of Lord Chancellor (Cairns) to Chancellor of Exchequer (20 Sol. Jo. 614).
(*m*) R. S. C., Ord. 36, rr. 45—51. See, generally, title ARBITRATION, Vol. I., pp. 483—492.
(*n*) R. S. C., Ord. 37, rr. 39, 40.
(*o*) *Ibid.*, r. 41.
(*p*) *Ibid.*, r. 51.
(*q*) *Ibid.*, r. 45.
(*r*) But see *Bute* (*Marquess*) v. *James* (1886), 33 Ch. D. 157.
(*s*) Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), s. 14, Sched. I., Part III. See also title CROWN PRACTICE.
(*t*) *Ibid.*, s. 9 (2).

142. The duties of these masters comprise:—(1) the control and superintendence of the Central Office of the Supreme Court (*u*); (2) judicial work in chambers (*a*); and (3) issuing directions on points of practice. They have also jurisdiction to refer actions for inquiry and report, or for trial (*b*).

Duties of masters.

Three masters sit daily in chambers, where they adjudicate on summonses, subject to an appeal to the judge. In this capacity they have the jurisdiction conferred on, or transferred to, "the court or a judge" by the Rules of the Supreme Court. A master can exercise, with certain exceptions, all the jurisdiction of a judge in chambers under the Judicature Acts or the Rules of the Supreme Court, or the Arbitration Act (*c*). One master, according to the rota arranged between all the masters, sits daily as practice master; he has to be present at and control the business of the Central Office, and to give the necessary directions as to practice and procedure (*d*).

143. The masters are appointed by the Lord Chief Justice and the Master of the Rolls alternately (*e*). The qualification is to be a practising barrister or special pleader or solicitor of five years' standing (*f*). The tenure of the office is during good behaviour (*g*).

Appointment.

(ii.) *Chancery Division.*

144. There are twelve masters of the Supreme Court (Chancery Division) (*h*). To every two judges in that division there are assigned four of these masters. They have a staff of clerks to assist them.

Masters in Chancery Division.

The masters (*h*) in the Chancery Division have no independent jurisdiction as have those of the King's Bench Division; all their authority is derived from the judge to whom they are assigned, and everything they do is done in his name (*i*), or by way of certificate. Any party, also, is entitled to have any question brought before the judge and to see him personally, and that even if the point be not disputed (*k*). The duties of these masters are to make investigations and take accounts etc., under the direction of the judge (*l*).

(*u*) Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), s. 7.

(*a*) R. S. C., Ord. 54, r. 12.

(*b*) Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 13, 14; R. S. C., Ord. 54, r. 12A.

(*c*) "When the rules say the court or a judge it is understood that 'the court' means a judge or judges in open court, and 'a judge' means a judge sitting in chambers" (*Re B.*, [1892] 1 Ch. 459, C. A., *per* KAY, L.J., at p. 463). See Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 39, and R. S. C., Ord. 54, r. 12.

(*d*) R. S. C., Ord. 61, r. 2.

(*e*) Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), s. 9 (1).

(*f*) *Ibid.*, s. 10.

(*g*) *Ibid.*, s. 11.

(*h*) These officers, who were formerly called chief clerks, have since February 22, 1897, been entitled to be called masters of the Supreme Court by an order of the Lord Chancellor made with the concurrence of the Lord Chief Justice and the consent of the Treasury.

(*i*) *Hayward* v. *Hayward* (1854), Kay, App. xxxi.; *Lloyds Bank* v. *Princess Royal Colliery Co.* (1900), 48 W. R. 427.

(*k*) *Hayward* v. *Hayward, supra; Re Rigg, Wadham* v. *Rigg* (1862), 10 W. R. 365; *Re Home Counties Life Assurance Co.* (1862), 10 W. R. 457; *Upton* v. *Brown* (1882), 20 Ch. D. 731, C. A.; *Scott* v. *Homer* (1890), 60 L. J. (CH.) 238.

(*l*) R. S. C., Ord. 55, rr. 15—18.

SECT. 5. Officers and Central Office.

A certificate of a master does not require the express approval of the judge, but on an application by motion or summons the certificate may be discharged or varied (*m*).

The qualification for master of the Supreme Court (Chancery Division) is to have been admitted and practised as a solicitor for ten years (*n*).

(iii.) *Taxing Office.*

Taxing office and taxing masters.

145. The Central Office of the Supreme Court conducts the business formerly conducted by the Chancery taxing office, of the Bankruptcy taxing office, of the taxing department of the office of the masters in lunacy, and of the taxing office of the Registrar in Companies Winding-up (*o*). All taxations of costs in the Chancery and King's Bench Divisions take place in a department of the Central Office called the Supreme Court taxing office. There are eleven masters of the Supreme Court (taxing office), one of whom sits daily to deal with short and urgent cases, while other cases are referred to some one of these masters.

There is, apparently, no qualification prescribed for the appointment of a master of the Supreme Court (taxing office) (*p*). A master has the right, subject to the approval of the Lord Chancellor, to appoint a deputy in case of absence from illness or other reasonable cause (*q*). A master may not practice as a barrister or solicitor, and if the latter, he must be struck off the roll on appointment (*r*).

SUB-SECT. 4.—*Registrars of the Chancery Division.*

Registrars.

146. There may be thirteen (*s*) registrars of the Chancery Division (*t*). They attend the judges of the Chancery Division and the Court of Appeal upon the hearing of appeals from the Chancery Division. Their duties are to take notes of the orders and judgments given, and to draw up and settle and pass them. They have also to keep distinct lists of the causes and matters set down to be heard before each judge of the Chancery Division.

On the occurrence of a vacancy in the office of registrar, the senior of the clerks to the registrars, to whom no sufficient objection to the satisfaction of the Lord Chancellor shall be made, is to be appointed registrar (*a*).

(*m*) R. S. C., Ord. 55, rr. 65, 71.

(*n*) Court of Chancery Act, 1852 (15 & 16 Vict. c. 80), s. 17.

(*o*) Statutory Rules and Orders Revised, Vol. XII., p. 924.

(*p*) The first masters of the Supreme Court (taxing office) were either Chancery taxing masters or were appointed to vacancies amongst the statutory masters of the Supreme Court. It is presumed that any future appointment will be made under the Court of Chancery Act, 1842 (5 & 6 Vict. c. 103), under which the former Chancery taxing masters were appointed.

(*q*) Court of Chancery Act, 1842 (5 & 6 Vict. c. 103), s. 6.

(*r*) *Ibid.*, s. 11.

(*s*) The number varies from time to time; there are now ten; see Court of Chancery (Officers) Act, 1867 (30 & 31 Vict. c. 87), s. 8; R. S. C., Ord. 62, r. 17.

(*t*) For the history of this office, see Yearly S. C. P., 1909, pp. 911 *et seq.*

(*a*) Court of Chancery Act, 1841 (5 Vict. c. 5), s. 38; Court of Chancery (Officers) Act, 1867 (30 & 31 Vict. c. 87), s. 8; Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 77.

In case of illness a registrar, with the approval of the Lord Chancellor, and on failure by the registrar, the Lord Chancellor, may appoint a deputy (*b*).

SUB-SECT. 5.—*Central Office of the Supreme Court.*

The Central Office.

147. The Central Office of the Supreme Court was created in 1879 (*c*), and consists of the following departments (*d*):— (1) Writ Appearance and Judgment Department; (2) Summons and Order Department; (3) Filing and Record Department; (4) Taxing Office; (5) Enrolment Department; (6) Judgments and Married Women's Acknowledgments Department; (6) Bills of Sale Department; (8) King's Remembrancer's Department; (9) Crown Office; (10) Associates Department. It is staffed by first, second, and third class clerks, appointed by the Lord Chancellor, the Lord Chief Justice, and the Master of the Rolls in rotation. These clerks are removable by a majority of these judges, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal (*e*).

SUB-SECT. 6.—*Paymaster-General and Pay Office.*

Paymaster-General.

148. The office of His Majesty's Paymaster-General was established in 1835. The appointment is by warrant under the Royal Sign Manual.

In 1872 the business of the Accountant-General of the High Court of Chancery was transferred to the Paymaster-General (*f*), and in 1833 (*g*) all the accounting departments of the Supreme Court of Judicature were consolidated into the pay office of the Supreme Court. This office, which is the Paymaster-General's office for the business of the Supreme Court, is regulated by the Supreme Court Funds Rules, 1905 (*h*). All moneys and funds which are paid into or out of court pass through this office. It is under the assistant paymaster-general for Supreme Court business. This officer has under him a deputy assistant paymaster-general and a staff of clerks. All securities and moneys in court are vested in the Paymaster-General for and on behalf of the Supreme Court of Judicature (*i*).

Pay office.

SUB-SECT. 7.—*District Registrars.*

District registrars.

149. District registrars of the High Court of Justice are appointed under the Order in Council constituting the district registry, which may provide that any registrar of any county court, or any registrar, or prothonotary, or district prothonotary, of any local court the jurisdiction of which was abolished by the

(*b*) Court of Chancery Act, 1841 (5 Vict. c. 5), s. 39.
(*c*) Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), ss. 4, 5, 6.
(*d*) R. S. C., Ord. 61, r. 1.
(*e*) Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), s. 9.
(*f*) Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44).
(*g*) Judicature (Funds etc.) Act, 1883 (46 & 47 Vict. c. 29).
(*h*) Statutory Rules and Orders, 1905 (No. 931, L. 21), p. 479; see also Yearly Supreme Court Practice, 1909, 1601.
(*i*) Judicature (Funds etc.) Act, 1883 (46 & 47 Vict. c. 29), s. 2.

SECT. 5. Officers and Central Office.

Judicature Act, 1873 (*k*), or from which an appeal was thereby given to the Court of Appeal, or any person who, having been a district registrar of the Court of Probate or of the Court of Admiralty, becomes a registrar of the High Court, shall be a registrar of the High Court (*l*). Registrars of any inferior court of record having jurisdiction in any part of the district defined by the Order in Council constituting the district registry are also qualified (*m*). If the Lord Chancellor, with the concurrence of the Treasury, considers it expedient from the nature and extent of the business that the office should be conferred on some person not qualified as above, it is lawful for him to appoint a solicitor of five years' standing (*n*).

The district registrar may, with the approval of the Lord Chancellor and subject to regulations made by the Lord Chancellor, appoint a deputy for a period not exceeding three months (*o*).

There is a statutory power to establish district registries by Order in Council (*p*).

Duties of district registrars.

150. The registrars have power to administer oaths and perform such duties as shall be assigned to them by rules of court (*q*). Writs of summons may be issued, and further proceedings down to and including entry for trial, and, in case of non-appearance of the defendant, down to and including final judgment, may be had in the district registry (*r*), where also accounts and inquiries may be taken, and books and documents produced (*s*).

Procedure.

151. The proceedings in district registries are regulated by rules of court (*t*). These rules provide that leave to enter judgments in default of appearance (*a*), leave to enter interlocutory judgments against third parties (*b*), leave to issue or renew writs of execution, examinations of judgment debtors, garnishee orders, charging orders *nisi*, and interpleader orders, are to be taken in the district registry (*c*).

A district registrar has all the authority and jurisdiction of a master of the Supreme Court either of the King's Bench or the Chancery Division so far as relates to proceedings in the district registry (*d*).

The district registrars at Manchester and Liverpool have certain additional powers in Chancery actions (*e*).

There is an appeal from the district registrar to a judge (*f*).

(*k*) 36 & 37 Vict. c. 66.
(*l*) *Ibid.*, s. 60.
(*m*) Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 13.
(*n*) Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 22.
(*o*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 22.
(*p*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 60.
(*q*) *Ibid.*, s. 62.
(*r*) *Ibid.*, s. 64; R. S. C., Ord. 35, r. 1.
(*s*) *Ibid.*, s. 66.
(*t*) R. S. C., Ord. 35.
(*a*) Ord. 35, r. 2.
(*b*) Ord. 16, rr. 50, 51; Ord. 35, r. 5.
(*c*) R. S. C., Ord. 35, r. 5.
(*d*) *Ibid.*, r. 6.
(*e*) *Ibid.*, r. 6A.
(*f*) *Ibid.*, r. 9.

152. Actions may be removed as of right from the district registry by the defendant in the case of specially indorsed writs when either no application for summary judgment has been made within four days from appearance or leave to defend has been obtained, and in the case of writs not specially indorsed before delivering defence, and also in admiralty actions *in rem* by any person who has intervened (*g*). Actions may be removed from London to a district registry by the court or a judge on good cause shown (*h*). Removal of Actions.

SUB-SECT. 8.—*Officers of the Probate, Divorce and Admiralty Division.*

153. The offices of the Probate, Divorce and Admiralty Division are separate from the Central Office of the Supreme Court, and are located at Somerset House, except the Admiralty Registry, which is at the Royal Courts of Justice. There are four probate registrars, who deal with summonses in probate and divorce matters in a similar manner to masters of the Supreme Court in matters in the King's Bench Division (*i*). They are assisted by a staff of clerks. There are also forty district probate registrars, who deal with non-contentious matters in probate. Probate registrars.

154. The Admiralty Registry has a registrar, an assistant registrar or marshal, and a staff of clerks. There is also an admiralty district registrar at Liverpool, the limits of whose registry may be fixed by Order in Council (*k*). Admiralty registrars

SUB-SECT. 9.—*The Official Solicitor.*

155. Formerly known as the Solicitor to the Suitors' Fund, and then as the solicitor to the High Court of Chancery, this officer has, since the Judicature Act, borne the title of Official Solicitor of the Supreme Court, and has no longer any duties to discharge with reference to funds in court. A relic of his former connection with those funds, however, survives in the requirement that a copy of every petition or summons for dealing with funds which have been placed in the list of dormant funds shall, where the fund amounts to or exceeds £500, be served on him unless the court or judge shall otherwise direct (*l*). Official solicitor.

The present duties of the office are of a very general nature, and include visiting prisoners confined in Brixton or Holloway Prisons for contempt of court, and carrying out the instructions of the Lord Chancellor as respects such prisoners (*m*); acting as solicitor to parties defending actions *in formâ pauperis*, if so directed by the court under special circumstances (*n*); acting as guardian *ad litem* to infants and persons of unsound mind not so found by inquisition (*o*); conducting sales by order of the court if the parties to

(*g*) R. S. C., Ord. 35, r. 13.
(*h*) *Ibid.*, r. 17.
(*i*) See R. S. C., Ord. 54, r. 12.
(*k*) Liverpool Admiralty District Registrar's Act, 1870 (33 & 34 Vict. c. 45).
(*l*) R. S. C., Ord. 22, r. 12 b.
(*m*) See title CONTEMPT OF COURT, Vol. VII., p. 325.
(*n*) See *Moutrie* v. *Mitchell*, [1901] 1 K. B. 596, C. A., and title PRACTICE AND PROCEDURE.
(*o*) See R. S. C., Ord. 16, rr. 18. 19, and titles INFANTS AND CHILDREN;

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the action cannot agree upon an independent solicitor; making certain investigations and reports in lunacy (*p*); acting, when so appointed, as a judicial trustee (*q*), and, generally, assisting the court in cases where the judge considers that the assistance of a solicitor is required. Where there is undue delay in any proceedings under any judgment or order he may be required to take steps to expedite matters, or to himself conduct the proceedings (*r*).

SECT. 6.—*The Circuit System.*

SUB-SECT. 1.—*In General.*

The circuits.

156. Judges go into every county except Middlesex (*s*) under commissions of the peace (*t*), of oyer and terminer (*u*), of general gaol delivery (*v*) of assize (*w*); incident to the commission of assize is the jurisdiction to try causes at *nisi prius*. These commissions enable them to try criminal and civil cases in the several counties. Sometimes King's Counsel are employed as special commissioners to relieve the judges from part of their work. The names of all the judges and of the King's Counsel and counsel having patents of precedence practising on the respective circuits are usually included in the commission (*x*). There is power to include in any commission of assize, oyer and terminer, or gaol delivery the name of any county court judge (*y*). There are seven circuits (*z*).

LUNATICS AND PERSONS OF UNSOUND MIND. As to costs see R. S. C., Ord. 65, r. 13: *Goatly* v. *Jones*, [1907] W. N. 161; *Eady* v. *Elsdon*, [1901] 2 K. B. 460, C. A.

(*p*) Rules in Lunacy, 1893, rr. 1, 2; Statutory Rules and Orders Revised, Vol. VIII., Lunatic, England, p. 29.

(*q*) Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), and Rules made thereunder.

(*r*) R. S. C., Ord. 33, r. 9; Ord. 65, r. 11, and see *Re Corsellis* (1884), 50 L. T. 703, C. A.

(*s*) From very early times judges of the superior courts of common law were sent into every county annually to try actions. Previously to the introduction of this system what were called "eyres" were held not oftener than once in seven years in each county; commissions of assize were also issued for the trial of actions of novel disseisin and mort d'ancestor, which were very numerous.

(*t*) The names of all the judges are included in the commission of the peace for each county. The commission of the peace binds the sheriffs and justices to give attendance on the judges.

(*u*) The commission of oyer and terminer empowers the judges to try persons not in gaol for treasons, felonies etc.

(*v*) The commission of general gaol delivery empowers the judges to try every prisoner in the gaol committed for any offence whatever, so as to clear the gaol of prisoners.

(*w*) The commission of assize empowers the judges to try civil actions.

(*x*) Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 7; and see Yearly Supreme Court Practice, 1909, p. 1353.

(*y*) County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 16.

(*z*) There were formerly six circuits—the Northern, the Midland, the Norfolk, the Home, the Oxford, and the Western; to these were added the North Wales and the South Wales Circuit. These circuits were discontinued by an Order in Council (Statutory Rules and Orders Revised, Vol. XII., Supreme Court, England, p. 22) made under the Judicature Act, 1875 (38 & 39 Vict. c. 77), and new circuits were appointed. For a list of the circuits see title BARRISTERS, Vol II., p. 366, and Order in Council of 28th June, 1909 (*London Gazette*, July 2, 1909).

SUB-SECT. 2.—*Assizes.*

SECT. 6. The Circuit System.

Assizes.

157. Assizes are held four times in the year (*a*), but if not more than five days before the commission day it appears to the clerk of assize that there is no business to be transacted requiring the attendance of jurors, he may give notice dispensing with the attendance of jurors (*b*). In such a case it is not necessary to hold the court of assize unless there is any other business to be transacted which does not require the attendance of jurors (*c*).

At the summer and winter assizes both civil and criminal business is taken on all circuits. At the autumn circuit only criminal business is taken, except at Birmingham, Manchester, Liverpool, Leeds, and Swansea. At the Easter circuit civil and criminal business is taken at Manchester and Liverpool, and criminal only at Leeds (*d*).

SUB-SECT. 3.—*Officers.*

Clerk of assize.

158. The principal officer in connection with assizes is the clerk of assize (*e*). His duties are to open the assize by reading the

(*a*) Statutory Rules and Orders Revised, Vol. XII., Supreme Court, England, p. 49. In ancient times assizes were held in all counties—twice in the year, that is, in the spring and autumn vacations—except in the counties of York and Lancaster, where no assizes were held in spring. In the eighteenth century it became a common practice to issue commissions for assizes to be held in winter—that is, in the vacation following Michaelmas term. These latter winter assizes are regulated by the Winter Assizes Acts, 1876 and 1877 (39 & 40 Vict. c. 57; 40 & 41 Vict. c. 46). Under these Acts counties may be united for the purpose of holding winter assizes. This power was extended to spring assizes by the Spring Assizes Act, 1879 (42 Vict. c. 1). This is done by Orders in Council, which are issued annually. These Orders in Council are printed and put on sale as statutory rules and orders, under the Rules Publication Act, 1893 (56 & 57 Vict. c. 66), and the rules made thereunder (Statutory Rules and Orders Revised, Vol. XI., Statutory Rule, p. 1). Orders in Council are also in force regulating the assizes in Lancashire (Statutory Rules and Orders Revised, Vol. XII., Supreme Court, England, p. 9); in Yorkshire (*ibid.*, p. 16), fixing commission days and the places for winter and summer assizes, making special regulations for Warwickshire, and as to Chancery and other causes at Liverpool and Manchester (*ibid.*, p. 27); as to the termination of the winter assizes (*ibid.*, p. 38); amending the order as to places for holding assizes (*ibid.*, p. 39); as to commission days; as to the autumn, winter and Easter assizes on the Northern Circuit, and as to winter assizes on the North and South Wales Circuits (*ibid.*, p. 49); as to summer and winter assizes on the North and South Wales Circuits (*ibid.*, p. 51); and two orders made in 1907 altering the dates for holding assizes in consequence of the alteration of the commencement of the Long Vacation (Statutory Rules and Orders, 1907, p. 1015, 1016). The Winter Assizes Acts, 1876 and 1877 (39 & 40 Vict. c. 57; 40 & 41 Vict. c. 46), and the Spring Assizes Act, 1879 (42 Vict. c. 1), give power to His Majesty by Order in Council to extend the jurisdiction of the Central Criminal Court during the months from September to May inclusive over the neighbouring counties. Orders in Council are made annually under these powers (see table of Temporary Orders at the end of the annual volumes of Statutory Rules and Orders). See also title CRIMINAL LAW AND PROCEDURE, p. 266, *post.*

(*b*) Assizes and Quarter Sessions Act, 1908 (8 Edw. 7, c. 41), s. 1.

(*c*) *Ibid.* s. 2.

(*d*) A new arrangement of the dates of the holding of assizes was made by Order in Council of 28th June, 1909 (*London Gazette*, July 2, 1909).

(*e*) The duties of a clerk of assize under the old practice are set out in detail in "The Clerk of Assize, Judges-Marshall and Cryer being the true Manner and Form of the Proceedings at the Assizes and General Gaole-Delivery, both in the Crown Court, and *Nisi Prius* Court, and The Right wayes of entering of

SECT. 6. The Circuit System.

commissions, and generally to perform such functions of a master and of an assessor as may be necessary (*f*). The power of appointment is vested in the senior judge going the circuit for the summer and winter assizes (*g*). Where the clerk of assize is paid by salary he may not take any fee for his own use (*h*). The tenure of the office is regulated by the Clerks of Assize etc. Act, 1869 (*i*), under which the qualification is three years' standing at the bar in actual practice, or as special pleader or conveyancer, or actual practice as a solicitor, or as a subordinate officer of a clerk of assize on circuit.

Clerk of arraigns.

The clerk of arraigns is an assistant to the clerk of assize, and opens the commission in case of his absence. He performs on the Crown side similar duties to those of the clerk of assize. The senior judge on the circuit for the summer and winter assizes has the right of appointment to this office (*j*).

Subordinate officers to the clerk of assize who are paid out of moneys provided by Parliament may not be removed from office without the sanction of the Treasury (*k*).

Judge's marshal.

Each judge when on circuit is attended by an officer called the marshal, who is appointed by the judge for each circuit, and who receives records for trials, swears in the grand jury, and acts as secretary to the judge.

Part VI.—Courts of Criminal Jurisdiction (*l*).

SECT. 1.—*Courts of Summary Jurisdiction.*

Courts of Summary jurisdiction.

159. Courts of summary jurisdiction are held either before justices of the peace sitting in petty sessions or metropolitan police magistrates or stipendiary magistrates (*m*).

SUB-SECT. 1.—*Constitution.*

Petty sessions.

160. Counties are divided into petty sessional divisions (*n*), which

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all Pleas, Verdicts, Judgments, and Orders in either of the said Courts" (by T. W., London, 1660).

(*f*) "Clerk of the Assize is he who writes all Things judicially done by the Justices of *Assize* in their Circuits. (Crompton, L'Authoritie et Jurisdiction des Courts, 227.) This officer is associated to the Judge in Commission of *Assize* to take *Assizes etc.*" (Jacob's Law Dictionary).

(*g*) Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 21.

(*h*) 32 & 33 Vict. c. 89, s. 5.

(*i*) 32 & 33 Vict. c. 89.

(*j*) 47 & 48 Vict. c. 61, s. 21.

(*k*) Clerks of Assize, etc. Act, 1869 (32 & 33 Vict. c. 89), s. 7.

(*l*) For criminal jurisdiction, generally, see title CRIMINAL LAW AND PROCEDURE, p. 225, *post*.

(*m*) For the appointment, qualification, and disqualification of justices and magistrates, see title MAGISTRATES.

(*n*) Division of Counties Act, 1828 (9 Geo. 4, c. 43).

may be altered by quarter sessions (*o*). In these divisions the sittings of the justices out of quarter sessions are called petty sessions. Every sitting and acting of justices of the peace, or of a stipendiary magistrate, in and for any city, borough, or town corporate, having a separate commission of the peace, or any part thereof, within England and Wales, at any police court or other places appointed in that behalf, is a petty sessions of the peace, and the district for which the same is held is a petty sessional division.

Petty sessional court.

A petty sessional court is defined (*p*) as a court of summary jurisdiction consisting of two or more justices, when sitting in a petty sessional court-house, and includes the Lord Mayor of the City of London, and any alderman of that city, and any metropolitan or borough police magistrate, or other stipendiary magistrate, when sitting in a court-house or place at which he is authorised by law to do alone any act authorised to be done by more than one justice of the peace (*q*).

Convictions.

Convictions on summary proceedings before justices are matters of record (*r*). Up to 1848 they were drawn up on parchment, as was the case with all records, but now they may be on parchment or paper (*s*).

Protection of justices.

Justices are protected from actions on account of errors in judgment so long as they act within the line of their authority (*t*). Some authorities have doubted whether justices out of sessions acting judicially are judges of record, but the better opinion appears to be that they are (*u*).

SUB-SECT. 2.—*Jurisdiction.*

Summary jurisdiction.

161. The jurisdiction of courts of summary jurisdiction and petty sessional courts extends to the hearing and determining of charges

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(*o*) Petty Sessional Divisions Act, 1836 (6 & 7 Will. 4, c. 12).

(*p*) *I.e.*, a court-house or other place where justices are accustomed to assemble for holding special or petty sessions, or a place appointed as a substitute for such place.

(*q*) Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 13.

(*r*) "Convictions have undoubtedly always been treated as records, and for that reason they were, prior to 4 Geo. 2, c. 26 (now repealed), required when filed to be in Latin; therefore the returning them either to this court, or to the sessions, does not alter their character" (*Chaney* v. *Payne* (1841), 1 Q. B. 712, *per* Lord DENMAN, C.J., at p. 724).

(*s*) Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43).

(*t*) *Miller* v. *Seare* (1777), 2 Wm. Bl. 1141, *per* DE GREY, C.J., at p. 1145. See also Justices Protection Act, 1848 (11 & 12 Vict. c. 44), and titles MAGISTRATES; PUBLIC AUTHORITIES AND PUBLIC OFFICERS.

(*u*) *Basten* v. *Carew* (1825), 3 B. & C. 649. "It maketh not a little, both for maintenance of the peace, and for the credit of the justices thereof, that they are numbered amongst the judges of record" (Lambard, Eirenarcha, Bk. 1, c. xiii.). "Now touching our justice of the peace, it is the opinion of the court (Y. B., 9 Edw. 4, c. 3; 14 Hen. 8, c. 16) and of divers other books in our law, that every one of them (even by himself) is a judge of record, for . . . he may take a recognizance of the peace . . . which none other can do but a judge of record, because the knowledging of that summe is to remain as a matter of record" (*ibid.*).

SECT. 1. Courts of Summary Jurisdiction.

which are triable summarily (*v*). These relate to the following matters: Notice of accidents to workmen (*w*); adulteration of seeds (*x*); agricultural gangs (*y*); aliens (*z*); alkali etc. works (*a*); animals (*b*); apprentices (*c*); army and other military forces (*d*); arsenic (*e*); assault, except where accompanied by an attempt to commit a felony, or where the court thinks it should be prosecuted by indictment (*f*); barbed wire fences (*g*); bicycles (*h*); billiard tables (*i*); births and deaths registration (*j*); boiler explosions (*k*); brawling in churches and chapels (*l*); bread (*m*); bribery and corruption (*n*); brothels (*o*); building societies (*p*); burials (*q*); byelaws of local

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(*v*) See also, generally, titles CRIMINAL LAW AND PROCEDURE, p. 225, *post*; MAGISTRATES, etc.

(*w*) Notice of Accidents Acts, 1894 and 1906 (57 & 58 Vict. c. 28, s. 1; 6 Edw. 7, c. 53). See title MASTER AND SERVANT.

(*x*) Adulteration of Seeds Act, 1869 (32 & 33 Vict. c. 112), s. 3. See title AGRICULTURE, Vol. I., p. 292.

(*y*) Agricultural Gangs Act, 1867 (30 & 31 Vict. c. 130), ss. 4, 5. See title AGRICULTURE, Vol. I., p. 276.

(*z*) Aliens Act, 1905 (5 Edw. 7, c. 13), ss. 1, 3, 4, 5, 7. See title ALIENS, Vol. I., p. 328.

(*a*) Alkali, etc. Works Regulation Act, 1906 (6 Edw. 7, c. 14), ss. 8, 15.

(*b*) Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), ss. 51—54. See title ANIMALS, Vol. I., p. 419.

(*c*) Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 12. See title MASTER AND SERVANT.

(*d*) Regulation of the Forces Act, 1881 (44 & 45 Vict. c. 57), s. 39; Army Act, 1881 (44 & 45 Vict. c. 58); Reserve Forces Act, 1882 (45 & 46 Vict. c. 48), ss. 25, 27; Militia Act, 1882 (45 & 46 Vict. c. 49), ss. 42—44; Annual Army Acts, 1881—1908. See title ROYAL FORCES.

(*e*) Arsenic Act, 1851 (14 & 15 Vict. c. 13), s. 4.

(*f*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 39, 40, 42—46; County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 168. See title CRIMINAL LAW AND PROCEDURE, p. 605, *post*.

(*g*) Barbed Wire Act, 1893 (56 & 57 Vict. c. 32), s. 3. See title BOUNDARIES AND FENCES, Vol. III., p. 128.

(*h*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 85. See title STREET TRAFFIC.

(*i*) Gaming Act, 1845 (8 & 9 Vict. c. 109), ss. 11, 12; Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 75.

(*j*) Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), ss. 5, 15, 17—20, 35, 39, 40 (see also Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 254, 339. See title REGISTRATION OF BIRTHS AND DEATHS.

(*k*) Boiler Explosions Acts, 1882 (45 & 46 Vict. c. 22), s. 5; 1890 (53 & 54 Vict. c. 35).

(*l*) Places of Religious Worship Act, 1812 (52 Geo. 3, c. 155), s. 12; Ecclesiastical Courts Jurisdiction Act, 1860 (23 & 24 Vict. c. 32), s. 1. See title ECCLESIASTICAL LAW.

(*m*) Bread Act, 1836 (6 & 7 Will. 4, c. 37), ss. 4—10; see also Weights and Measures Act, 1889 (52 & 53 Vict. c. 21). See titles FOOD AND DRUGS; WEIGHTS AND MEASURES.

(*n*) Bribery etc. (Prevention of Corruption Act, 1906 (6 Edw. 7, c. 34), s. 1).

(*o*) Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 11; Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 13.

(*p*) Building Societies Acts, 1874 and 1894 (37 & 38 Vict. c. 42, ss. 31, 43; 57 & 58 Vict. c. 47), ss. 21—23. See title BUILDING SOCIETIES, Vol. III., p. 386.

(*q*) Burial Act, 1855 (18 & 19 Vict. c. 128), s. 2. See also Burial of Drowned Persons Act, 1808 (48 Geo. 3, c. 75), s. 1; Cremation Act, 1902 (2 Edw. 7, c. 8), s. 8, and title BURIAL AND CREMATION, Vol. III., p. 401.

authorities (*r*); canals (*s*); canal boats (*t*); chaff-cutting machines (*u*); children and infants (*v*); chimney sweepers (*w*); clubs (*x*); companies (*y*); constables, neglect of duty by (*z*); copyright (*a*); corn returns (*b*): cruelty to animals (*c*); customs (*d*); dogs (*e*); drunkenness (*f*); excise (*g*); explosives (*h*); factories and workshops (*i*); fertilisers and feeding stuffs (*j*); fire alarms (*k*); food and

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(*r*) Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34); Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89); Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77); Public Health Act, 1875 (38 & 39 Vict. c. 55), and amending Acts; Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50); Local Government Act, 1888 (51 & 52 Vict. c. 41).

(*s*) Canals (Offences) Act, 1840 (3 & 4 Vict. c. 50). See title RAILWAYS AND CANALS.

(*t*) Canal Boats Acts, 1877 (40 & 41 Vict. c. 60), ss. 1, 2, 5, 6, 10; 1884 (47 & 48 Vict. c. 75), ss. 7, 8.

(*u*) Chaff Cutting Machines (Accidents) Act, 1897 (60 & 61 Vict. c. 60), s. 3. See title AGRICULTURE, Vol. I., p. 295.

(*v*) Elementary Education Act, 1876 (39 & 40 Vict. c. 79), s. 56; Children's Dangerous Performances Act, 1879 (42 & 43 Vict. c. 34); Dangerous Performances Act, 1897 (60 & 61 Vict. c. 52); Betting and Loans (Infants) Act, 1892 (55 Vict. c. 4), ss. 2, 4; Employment of Children Act, 1903 (3 Edw. 7, c. 45); Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15); Children Act, 1908 (8 Edw. 7, c. 67). See titles EDUCATION; INFANTS AND CHILDREN.

(*w*) Chimney Sweepers Regulation Act, 1864 (27 & 28 Vict. c. 37), ss. 6, 7; Chimney Sweepers Act, 1875 (38 & 39 Vict. c. 70), ss. 15—20; Chimney Sweepers Act, 1894 (57 & 58 Vict. c. 51), s. 1.

(*x*) Licensing Act, 1902 (2 Edw. 7, c. 28), Part III. See title CLUBS, Vol. IV., pp. 429 *et seq.*

(*y*) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 276. See title COMPANIES, Vol. V.

(*z*) Parish Officers Act, 1793 (33 Geo. 3, c. 55), s. 1; Canals (Offences) Act, 1840 (3 & 4 Vict. c. 50), ss. 4, 5; Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 194; County Police Act, 1839 (2 & 3 Vict. c. 93), ss. 12, 15. See title POLICE.

(*a*) Musical (Summary Proceedings) Copyright Act, 1902 (2 Edw. 7, c. 15); Musical Copyright Act, 1906 (6 Edw. 7, c. 36); Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), ss. 6, 8. See title COPYRIGHT AND LITERARY PROPERTY, Vol. VIII., p. 169.

(*b*) Corn Returns Act, 1882 (45 & 46 Vict. c. 37), s. 17.

(*c*) Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92); Cruelty to Animals Act, 1854 (17 & 18 Vict. c. 60); Cruelty to Animals Act, 1876 (39 & 40 Vict. c. 77); see also Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), s. 23; Wild Animals in Captivity Protection Act, 1900 (63 & 64 Vict. c. 33), s. 3. See title ANIMALS, Vol. I., p. 409.

(*d*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), and amending Acts; Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 8. See title REVENUE.

(*e*) Dogs Act, 1871 (34 & 35 Vict. c. 56); Dogs Act, 1906 (6 Edw. 7, c 32); Rabies Order, 1897 (No. 57-78, 23rd March, 1907); Dogs Order, 1906 (No. 7124, 22nd October, 1906); Dog Licences Act, 1867 (30 Vict. c. 5), ss. 8, 9. See title ANIMALS, Vol. I., p. 394.

(*f*) Licensing Acts, 1872, 1902 (35 & 36 Vict. c. 94; 2 Edw. 7, c. 28). See also Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 58; London Hackney Carriages Act, 1843 (6 & 7 Vict. c. 86), s. 28; Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 41; Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19). See title INTOXICATING LIQUORS.

(*g*) See title REVENUE.

(*h*) Explosives Act, 1875 (38 & 39 Vict. c. 17). See title EXPLOSIVES.

(*i*) Factory and Workshop Act, 1901 (1 Edw. 7, c. 22). See title FACTORIES AND WORKSHOPS.

(*j*) Fertilisers and Feeding Stuffs Act, 1906 (6 Edw. 7, c. 27). See title AGRICULTURE, Vol. I., p. 285.

(*k*) False Alarms of Fire Act, 1895 (58 & 59 Vict. c. 28).

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drugs (*l*); foreign plate (*m*); friendly etc. societies (*n*); game (*o*); gaming (*p*); gasworks (*q*); gun licences (*r*); hawkers (*s*); highways (*t*); hops (*u*); husband and wife (*v*); indecent advertisements (*w*); industrial schools (*x*); licensed houses (*y*); juries (*z*); landlord and tenant (*a*); larceny of deer (*b*); dogs (*c*); fences etc. (*d*); fish (*e*); pigeons (*f*); trees etc. (*g*); libraries (*h*); lighting and watching (*i*); locomotives on highways (*j*); and motor cars (*k*); lotteries (*ll*);

(*l*) Sale of Food and Drugs Acts, 1875 to 1899 (38 & 39 Vict. c. 63; 42 & 43 Vict. c. 30; 50 & 51 Vict. c. 29; 62 & 63 Vict. c. 51); see also Customs and Inland Revenue Act, 1882 (45 & 46 Vict. c. 41), s. 6; Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c, 51), ss. 8, 9. See titles FOOD AND DRUGS; REVENUE.

(*m*) Hall-marking of Foreign Plate Act, 1904 (4 Edw. 7, c. 6), s. 1.

(*n*) Friendly Societies Act, 1896 (59 & 60 Vict. c. 25); Collecting Societies and Industrial Assurance Companies Act, 1896 (59 & 60 Vict. c. 26); Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39); Loan Societies Act, 1840 (3 & 4 Vict. c. 110). See titles *passim*.

(*o*) Night Poaching Act, 1828 (9 Geo. 4, c. 69); Game Act, 1831 (1 & 2 Will. 4, c. 32); Game Licences Act, 1860 (23 & 24 Vict. c. 90); Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 17; Poaching Prevention Act, 1862 (25 & 26 Vict. c. 114); Ground Game Act, 1880 (43 & 44 Vict. c. 47), s. 6. See title GAME.

(*p*) Gaming Act, 1845 (8 & 9 Vict. c. 109); Betting Act, 1853 (16 & 17 Vict. c. 119); Betting Act, 1874 (37 Vict. c. 15). See title GAMING AND WAGERING.

(*q*) Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15); Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41). See title GAS.

(*r*) Gun Licence Act, 1870 (33 & 34 Vict. c. 57); Pistols Act, 1903 (3 Edw. 7, c. 18).

(*s*) Hawkers Act, 1888 (51 & 52 Vict. c. 33). See title MARKETS AND FAIRS.

(*t*) Highway Act, 1835 (5 & 6 Will. 4, c. 50); Highway Act, 1864 (27 & 28 Vict. c. 101). See title HIGHWAYS, STREETS, AND BRIDGES.

(*u*) Hop (Prevention of Frauds) Act, 1866 (29 & 30 Vict. c. 37). See title AGRICULTURE, Vol. I., p. 291.

(*v*) Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39); Licensing Act, 1902 (2 Edw. 7, c. 29), s. 5; Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 21. See title HUSBAND AND WIFE.

(*w*) Indecent Advertisements Act, 1889 (52 & 53 Vict. c. 18).

(*x*) See Children Act, 1908 (8 Edw. 7, c. 67), and title INFANTS AND CHILDREN.

(*y*) Refreshment House Act, 1860 (23 Vict. c. 27); Public House Closing Act, 1864 (27 & 28 Vict. c. 64); Licensing Act, 1872 (35 & 36 Vict. c. 94); Licensing Act, 1874 (37 & 38 Vict. c. 49); Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. 7, c. 27); Licensing Act, 1902 (2 Edw. 7, c. 28); Children Act, 1908 (8 Edw. 7, c. 67), s. 120. See title INTOXICATING LIQUORS.

(*z*) Juries Act, 1825 (6 Geo. 4 c. 50), s. 45; see title JURIES.

(*a*) Law of Distress Amendment Act, 1895 (58 & 59 Vict. c. 24), s. 2. See title DISTRESS.

(*b*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 12. See title ANIMALS, Vol. I., p. 371.

(*c*) *Ibid.*, s. 18.

(*d*) *Ibid.*, s. 34.

(*e*) *Ibid.*, s. 24.

(*f*) *Ibid.*, s. 23.

(*g*) *Ibid.*, ss. 33, 36, 37.

(*h*) Libraries Offences Act, 1898 (61 & 62 Vict. c. 53).

(*i*) Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 55.

(*j*) Locomotives Act, 1865 (28 & 29 Vict. c. 83); Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77); Locomotives Act, 1898 (61 & 62 Vict. c. 29). See title STREET TRAFFIC.

(*k*) Locomotives on Highways Act, 1896 (59 & 60 Vict. c. 36); Motor Car Act, 1903 (3 Edw. 7, c. 36). See title STREET TRAFFIC.

(*ll*) Gaming Act, 1802 (42 Geo. 3, c. 119) s. 2; Lotteries Act, 1823 (4 Geo. 4,

lunatics (*m*); markets and fairs (*n*); marriage (*o*); masters and servants (*p*); medical practitioners (*q*); merchandise marks (*r*); merchant shipping (*s*); metal dealers (*t*); midwives (*u*); mines (*x*); money-lenders (*a*); music and dancing (*b*); obscene publications (*c*); patents and trade marks (*d*); pawnbrokers (*e*); pedlars (*f*) personation (*g*); petroleum (*h*); poison (*i*); poor law (*j*); post office (*k*); pound-

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c. 60), s. 41; Vagrancy Act, 1824 (5 Geo. 4, c. 83), ss. 5, 21. See title GAMING AND WAGERING.

(*m*) Lunacy Act, 1890 (53 Vict. c. 5), ss. 315, 317, 322, 323, 326. See title LUNATICS AND PERSONS OF UNSOUND MIND.

(*n*) Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14), s. 13. See title MARKETS AND FAIRS.

(*o*) Marriage Act, 1898 (61 & 62 Vict. c. 58). See title HUSBAND AND WIFE.

(*p*) Frauds by Workmen Acts, 1748, 1777 (22 Geo. 2, c. 27; 17 Geo. 3, c. 56); Servants' Characters Act, 1792 (32 Geo. 3, c. 56); Truck Act, 1831 (1 & 2 Will. 4, c. 37); Hosiery Act, 1843 (6 & 7 Vict. c. 40); Misappropriation by Servants Act, 1863 (26 & 27 Vict. c. 103); Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86); Payment of Wages in Public Houses Prohibition Act, 1883 (46 & 47 Vict. c. 31); Truck Amendment Act, 1887 (50 & 51 Vict. c. 46); Truck Act, 1896 (59 & 60 Vict. c. 44); Trade Disputes Act, 1906 (6 Edw. 7, c. 47). See titles MASTER AND SERVANT; TRADE AND TRADE UNIONS.

(*q*) Medical Act, 1858 (21 & 22 Vict. c. 90), ss. 40, 41; Dentists Act, 1878 (41 & 42 Vict. c. 33), ss. 3, 4. See title MEDICINE AND PHARMACY.

(*r*) Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28).

(*s*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60); Seamen's Clothing Act, 1869 (32 & 33 Vict. c. 57). Seamen's and Soldiers' False Characters Act, 1906 (6 Edw. 7, c. 5). See title SHIPPING AND NAVIGATION.

(*t*) Old Metal Dealers Act, 1861 (24 & 25 Vict. c. 110); Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 13.

(*u*) Midwives Act, 1902 (2 Edw. 7, c. 17).

(*x*) Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 61. See title MINES, MINERALS AND QUARRIES.

(*a*) Money-lenders Act, 1900 (63 & 64 Vict. c. 51). See title MONEY AND MONEY-LENDING.

(*b*) Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 51.

(*c*) Obscene Publications Act, 1857 (20 & 21 Vict. c. 83).

(*d*) Patents and Designs Act, 1907 (7 Edw. 7, c. 29), ss. 89, 90. See title PATENTS AND INVENTIONS.

(*e*) Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93). See title PAWNBROKERS AND PLEDGES.

(*f*) Pedlars Act, 1871 (34 & 35 Vict. c. 96); Pedlars Act, 1881 (44 & 45 Vict. c. 45). See title MARKETS AND FAIRS.

(*g*) Admiralty Powers Act, 1865 (28 & 29 Vict. c. 124), s. 8; Army Act, 1881 (44 & 45 Vict. c. 58), s. 142; Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 17; County Police Act, 1839 (2 & 3 Vict. c. 93), s. 15; Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 12.

(*h*) Petroleum Act, 1871 (34 & 35 Vict. c. 105); Petroleum Act, 1879 (42 & 43 Vict. c. 47); Petroleum (Hawkers) Act, 1881 (44 & 45 Vict. c. 67).

(*i*) Poisoned Grain Prohibition Act, 1863 (26 & 27 Vict. c. 113); Poisoned Flesh Prohibition Act, 1864 (27 & 28 Vict. c. 115); Pharmacy Acts, 1868 and 1869 (31 & 32 Vict. c. 121; 32 & 33 Vict. c. 117); Drugging of Animals Act, 1876 (39 Vict. c. 13).

(*j*) Poor Relief Act, 1815 (55 Geo. 3, c. 137), s. 2; Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), ss. 43, 92, 98; Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 58; Poor Law Amendment Act, 1866 (29 & 30 Vict. c. 113), s. 15; Pauper Inmates Discharge and Regulation Act, 1871 (34 & 35 Vict. c. 108), s. 7; Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), s. 44; Casual Poor Act, 1882 (45 & 46 Vict. c. 36), s. 5. See title POOR LAW.

(*k*) See the Post Office Act, 1908 (8 Edw. 7, c. 48). See title POST OFFICE.

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breach (*l*); prevention of crimes (*m*); printers (*n*); prisons (*o*); property, damage to (*p*); public health (*q*); railways (*r*); reformatory schools (*s*); salmon and freshwater fisheries (*t*); sea fisheries (*u*); shop clubs (*v*); shop hours (*w*); solicitors (*x*); steam whistles (*y*); street betting (*z*); Sunday observance (*a*); swearing (*b*); telegraphs (*c*); theatres (*d*); threshing machines (*e*); towns improvement (*f*); towns police (*g*); trade unions (*h*); tramways (*i*); uniforms (*j*);

(*l*) Pound-breach Act, 1843 (6 & 7 Vict. c. 30). See title ANIMALS, Vol. I., p. 386.

(*m*) Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112).

(*n*) Newspapers, Printers, and Reading Rooms Repeal Act, 1869 (32 & 33 Vict. c. 24); Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 10. See title PRESS AND PRINTING.

(*o*) Prison Act, 1865 (28 & 29 Vict. c. 126), ss. 38, 39, 52. See title PRISONS.

(*p*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 22, 24, 25, 41, 52; Town Gardens Protection Act, 1863 (26 & 27 Vict. c. 13), s. 5.

(*q*) Public Health Act, 1875 (38 & 39 Vict. c. 55), and amending Acts. See title PUBLIC HEALTH.

(*r*) Railway Regulation Act, 1840 (3 & 4 Vict. c. 97), ss. 13, 16; Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20); Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 37; Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), ss. 23, 40; Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57), s. 5. See title RAILWAYS AND CANALS.

(*s*) See the Children Act, 1908 (8 Edw. 7, c. 67).

(*t*) Salmon and Freshwater Fishery Acts, 1861 to 1892 (24 & 25 Vict. c. 109; 26 & 27 Vict. c. 10; 28 & 29 Vict. c. 121; 33 & 34 Vict. c. 33; 36 & 37 Vict. c. 71; 39 & 40 Vict. cc. 19, 34; 40 & 41 Vict. c. 65; 41 & 42 Vict. c. 39; 42 & 43 Vict. c. 26; 47 & 48 Vict. c. 11; 49 & 50 Vict. cc. 20, 39; 54 & 55 Vict. c. 37 (Parts III., IV.); 55 & 56 Vict. c. 50. See title FISHERIES.

(*u*) Fisheries (Oyster, Crab, and Lobster) Act, 1877 (40 & 41 Vict. c. 42); Fisheries (Oyster, Crab, and Lobster) Act, 1877, Amendment Act, 1884 (47 & 48 Vict. c. 26).

(*v*) Shop Clubs Act, 1902 (2 Edw. 7, c. 21).

(*w*) Shop Hours Acts, 1892 and 1895 (55 & 56 Vict. c. 62; 58 Vict. c. 5); Seats for Shop Assistants Act, 1899 (62 & 63 Vict. c. 21).

(*x*) Attorneys and Solicitors Act, 1874 (37 & 38 Vict. c. 68), s. 12. See title SOLICITORS.

(*y*) Steam Whistles Act, 1872 (35 & 36 Vict. c. 61).

(*z*) Street Betting Act, 1906 (6 Edw. 7, c. 43).

(*a*) Sunday Observance Act, 1625 (1 Car. 1, c. 1); Sunday Observance Act, 1677 (29 Car. 2, c. 7); Bread Act, 1836 (6 & 7 Will. 4, c. 37), s. 14; see title TIME.

(*b*) Profane Oaths Act, 1745 (19 Geo. 2, c. 21).

(*c*) Telegraph Act, 1863 (26 & 27 Vict. c. 112), s. 45; Post Office Act, 1908 (8 Edw. 7, c. 48); Wireless Telegraphy Act, 1904 (4 Edw. 7, c. 24), s. 1. See title TELEGRAPHS AND TELEPHONES.

(*d*) Theatres Act, 1843 (6 & 7 Vict. c. 68). See title THEATRES, MUSIC HALLS AND SHOWS.

(*e*) Threshing Machines Act, 1878 (41 Vict. c. 12). See title AGRICULTURE, Vol. I., p. 295.

(*f*) Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34).

(*g*) Town Police Clauses Acts, 1847 and 1889 (10 & 11 Vict. c. 89; 52 & 53 Vict. c. 14).

(*h*) Trade Union Act, 1871 (34 & 35 Vict. c. 31), s. 12. See title TRADE AND TRADE UNIONS.

(*i*) Tramways Act, 1870 (33 & 34 Vict. c. 78). See title TRAMWAYS AND LIGHT RAILWAYS.

(*j*) Uniforms Act, 1894 (57 & 58 Vict. c. 45).

vaccination (*k*); vagrants (*l*); veterinary surgeons (*m*); water (*n*); weights and measures (*o*); wild birds (*p*).

162. There is also jurisdiction as to certain indictable offences:— (1) In the case of young persons consenting to the justices dealing with the charge, over all indictable offences other than homicide (*q*); (2) where adults plead guilty to charges of simple larceny, offences punishable as simple larceny, and other kindred offences (*r*); (3) where adults consent, over like offences where the value of the whole of the property the subject of the offence does not in the opinion of the court exceed 40*s*. (*s*); and (4) trivial case of libel in newspapers (*t*). Jurisdiction over indictable offences.

These courts may take the examinations of persons charged with indictable offences, and commit them to prison to await their trial, or bind them over to appear at the assizes or sessions as the case may be (*u*); and may order persons to enter into recognisances and to find sureties to keep the peace and to be of good behaviour (*x*).

163. Courts of summary jurisdiction have also civil or *quasi* civil jurisdiction as to bastardy (*a*); dogs (*b*); harbours (*c*); highway rates (*d*); landlord and tenant (*e*); master and servant (*f*); Civil jurisdiction.

(*k*) Vaccination Acts, 1867, 1871, and 1898 (30 & 31 Vict. c. 84, s. 32; 34 & 35 Vict. c. 98, s. 11; 61 & 62 Vict. c. 49). See title POOR LAW.

(*l*) Vagrancy Acts, 1824 and 1898 (5 Geo. 4, c. 83; 61 & 62 Vict. c. 39).

(*m*) Veterinary Surgeons Act, 1881 (44 & 45 Vict. c. 62). See title MEDICINE AND PHARMACY.

(*n*) Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17); Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93); Water Companies (Regulation of Powers) Act, 1887 (50 & 51 Vict. c. 21). See title WATER SUPPLY.

(*o*) Weights and Measures Acts, 1878, 1889, and 1904 (41 & 42 Vict. c. 49; 52 & 53 Vict. c. 21; 4 Edw. 7, c. 28). See title WEIGHTS AND MEASURES.

(*p*) Wild Birds Protection Acts, 1880 to 1904 (43 & 44 Vict. c. 35; 44 & 45 Vict. c. 51; 59 & 60 Vict. c. 56; 2 Edw. 7, c. 6; 4 Edw. 7, c. 4). See title ANIMALS, Vol. I., p. 405.

(*q*) Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 11, Sched. I.; Summary Jurisdiction Act, 1899 (62 & 63 Vict. c. 22), s. 2; and see title CRIMINAL LAW AND PROCEDURE, p. 268, *post*.

(*r*) See title CRIMINAL LAW AND PROCEDURE, p. 269, *post*.

(*s*) Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 12, 13, 14, Sched. I.; Summary Jurisdiction Act, 1899 (62 & 63 Vict. c. 22), s. 1.

(*t*) Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), s. 5. See title LIBEL AND SLANDER.

(*u*) Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 1; Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 21.

(*x*) Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 25.

(*a*) Bastardy Act, 1845 (8 & 9 Vict. c. 10), and amending Acts. See title BASTARDY, Vol. II., p. 443.

(*b*) Dogs Act, 1906 (6 Edw. 7, c. 32). See title ANIMALS, Vol. I., p. 394.

(*c*) Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), ss. 74, 76. See titles SHIPPING AND NAVIGATION; WATERS AND WATERCOURSES.

(*d*) Highway Act, 1835 (5 & 6 Will. 4, c. 50).

(*e*) Small Tenements Recovery Act, 1838 (1 & 2 Vict. c. 74). See title LANDLORD AND TENANT.

(*f*) Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90). See title MASTER AND SERVANT.

SECT. 1. Courts of Summary Jurisdiction.

under the Lands Clauses Act (*g*); licensing (*h*); lunacy (*i*); poor (*k*).

In the Metropolitan Police District there is also jurisdiction to order the return of goods detained from the owner not exceeding the value of £15, and to enforce the order by committal to prison (*l*).

Detinue.

Jurisdiction of single justice.

164. One justice of the peace sitting alone has jurisdiction to receive any information or complaint, and to grant a summons or warrant thereon, and to issue a summons or warrant for the attendance of witnesses, and to do all other necessary acts and matters preliminary to the hearing (*a*). He has also jurisdiction, when sitting alone in a petty sessional court-house, to hear and determine charges under particular statutes (*b*), but in such cases he may not impose a punishment exceeding imprisonment for fourteen days or a fine of 20*s.* (*c*).

SECT. 2.—*Quarter and General Sessions.*

Quarter sessions.

165. Quarter sessions are held in the case of counties before the justices in quarter sessions, or in boroughs having a separate court of quarter sessions before the recorder (*d*).

SUB-SECT. 1.—*Constitution of Quarter and General Sessions.*

(1) *In Counties.*

Sittings and duties.

166. The commission of the peace, in the case of counties, assigns to the justices and any two or more of them (*e*) "to inquire the truth more fully by the oath of good and lawful men of the county, by whom the truth of the matter shall be better known, of all and all manner of crimes, trespasses, and all and singular other offences of which the justices of our peace may or ought lawfully to inquire . . . and to hear and determine all and singular the crimes

(*g*) Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18). See title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., pp. 77, 163, 173.

(*h*) Licensing Act, 1872 (35 & 36 Vict. c. 94) etc. See title INTOXICATING LIQUORS.

(*i*) Lunacy Act, 1890 (53 Vict. c. 5). See title LUNATICS AND PERSONS OF UNSOUND MIND.

(*k*) Poor Relief Act, 1819 (59 Geo. 3, c. 12) etc; Distress for Rates Act, 1849 (12 & 13 Vict. 14) etc. See titles POOR LAW; RATES AND RATING.

(*l*) Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 40.

(*a*) Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 29.

(*b*) Bread Act, 1836 (6 & 7 Will. 4, c. 37); Places of Religious Worship Act, 1812 (52 Geo. 3, c. 155); Highway Act, 1835 (5 & 6 Will. 4, c. 50); Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 12, 15, 23, 24, 33, 36; Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 22, 24, 25, 37, 41, 52; Railway Regulation Act, 1840 (3 & 4 Vict. c. 97), ss. 13, 16; Profane Oaths Act, 1745 (19 Geo. 2, c. 21); Vagrancy Act, 1824 (5 Geo. 4, c. 83).

(*c*) Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 20 (7).

(*d*) See title MAGISTRATES; and also as to London and Southwark, pp. 177, 203, *post*.

(*e*) Formerly there was a provision in the commission, "of whom A. B. etc., shall be one." These specially named justices were called those of the quorum, Where a statute specially requires an act to be done before two or more justices, of whom one must be of the quorum, no Act etc. can be impeached, set aside, or vacated on the ground that it does not express that one of the justices is of the quorum (Justices Act, 1753 (26 Geo. 2, c. 27)).

and offences and trespasses aforesaid." Further, justices are directed to make their sessions four times by the year and more often if need be (*f*). The sessions are directed to be held in the first week after 11th October, 28th December, 31st March, and 24th June respectively (*g*).

All the sessions held under this power are general sessions of the peace, but the four sessions held at the prescribed times are properly called general quarter sessions (*h*).

Constitution of general sessions.

167. Two justices are necessary to constitute a general sessions of the peace, and if two are not present, there is no power to adjourn the sessions legally. Thus, if two justices are not present the power to hold a quarter sessions for that quarter is lost, although a general sessions can be held before the next appointed time for quarter sessions (*i*).

General sessions, as distinguished from general quarter sessions, are in practice never held, except in the case of the county of London (*k*), the practice being, in cases where more than four sessions in the year are requisite, to adjourn the general quarter sessions (*l*). This is done because the jurisdiction of general quarter sessions is wider than that of other general sessions of the peace (*m*).

General quarter sessions and general sessions of the peace are inferior courts of record (*n*).

(*f*) Stat. (1414), 2 Hen. 5, stat. 1, c. 4. By this Act the quarter sessions were directed to be held in the first week after the feast of St. Michael, the Epiphany, the claus (*i.e.*, close or conclusion, New English Dictionary, Vol. II., p. 470) of Easter, and the translation of St. Thomas respectively. In case not more than five days before the day for holding a court of quarter sessions it appears to the clerk of the peace that there is no business to be transacted which requires the attendance of jurors, notice may be given dispensing with the attendance of jurors (Assizes and Quarter Sessions Act, 1908 (8 Edw. 7, c. 41), s. 1), and in such a case it is not necessary to hold the court of quarter sessions unless there is any business, not requiring the attendance of jurors, to be transacted by the court (*ibid.*, s. 2). And see Order in Council of 28th June, 1909 (*London Gazette*, 2nd July, 1909).

(*g*) Law Terms Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 70), s. 35. By the Assizes and Quarter Sessions Act, 1908 (8 Edw. 7, c. 41), s. 3, the time may be altered so as to avoid clashing with the assizes, so that the sessions are held not earlier than fourteen days before, or later than fourteen days after, the prescribed week.

(*h*) "It seems the better opinion, that the quarter sessions are a species only of general sessions, and that such sessions are properly called general quarter sessions, which are holden in the four quarters of the year, in pursuance of the above-mentioned statute of (1414) 2 Hen. 5, stat. 1, c. 4; and that any other sessions holden at any other time for the general execution of the authority of justices of the peace, which by the above-mentioned statute, justices of the peace are authorised to hold oftener than at the time therein specified, if need be, may be properly called general sessions" (2 Hawk. P. C., c. 8, s. 47).

(*i*) *R.* v. *Polstead* (*Inhabitants*) (1747), 2 Stra. 1263; *R.* v. *West Torrington* (*Inhabitants*) (1749), Burr. S. C. 293; *R.* v. *Westrington* (1750), 2 Bott's Poor Laws, pl. 881; *R.* v. *Carmarthen Justices* (1821), 4 B. & Ald. 291; *R.* v. *Mullaney* (1833), 6 C. & P. 96, 100; *R.* v. *Middlesex Justices* (1834), 5 B. & Ad. 1113.

(*k*) See Middlesex Sessions Act, 1844 (7 & 8 Vict. c. 71), ss. 8, 9; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 42.

(*l*) Archbold, Quarter Sessions, 6th ed., p. 3.

(*m*) 2 Hale, P. C. 49.

(*n*) 3 Hawk. P. C. Bk. 2, c. 8, 7th ed. by Leach (1795), p. 86; *R.* v.

SECT. 2. Quarter Sessions.

Commission of the peace.

168. A commission of the peace may be granted for a whole county, or for a riding or other division of the same (*o*). Coroners (*p*), chairmen of county councils (*q*), and chairmen of district councils, including mayors of boroughs other than county boroughs (*r*), are *ex officio* justices for the county. A sheriff is disqualified from acting as a justice during his term of office (*s*).

(2) *In Boroughs.*

Borough sessions.

169. In boroughs under the Municipal Corporations Act, 1882 (*t*), which have the franchise of a separate court of quarter sessions, the recorder is the sole judge of the court (*u*), and the borough justices are not to act as justices at any court of gaol delivery or quarter sessions (*a*).

The recorder is to hold a court of quarter sessions in and for the borough once in every quarter of a year, or oftener, if and as he thinks fit or the Secretary of State directs (*b*). The recorder may in the case of sickness or unavoidable absence appoint, by writing signed by him, a barrister of five years' standing to act as deputy recorder at the quarter sessions then next ensuing, or then being held, but not longer or otherwise (*c*). If the recorder is by reason of illness, absence, or other cause, incapable of appointing a deputy, the Secretary of State may do so (*d*).

Where necessary the recorder may appoint a properly qualified assistant recorder (*e*).

In the absence of the recorder and deputy recorder, the mayor should open the court and immediately adjourn it and all recognisances to a future day, and so from time to time (*f*).

The quarter sessions of a borough is a court of record (*g*).

Clement (1821), 4 B. & Ald. 218; *per* HOLROYD, J., at p. 233; *Re Pater* (1864), 33 L. J. (M. C.) 142.

(*o*) *E.g.*, the three Ridings of Yorkshire; the parts of Lindsey, Kesteven, and Holland in Lincolnshire, the Island of Ely etc.

(*p*) See *Davis* v. *Pembrokeshire Justices* (1881), 7 Q. B. D. 513; and title CORONERS, Vol. VIII., p. 251.

(*q*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 2 (5).

(*r*) Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 21, 22.

(*s*) Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 17, and see title SHERIFFS AND BAILIFFS. Formerly, there was a property qualification for a justice of the peace, but this was removed by the Justices of the Peace Act, 1906 (6 Edw. 7, c. 16). This Act only requires the justice to be of full age and to reside within the county or within seven miles thereof (s. 2). See, further, title MAGISTRATES.

(*t*) Apparently there are now no boroughs having any jurisdiction, except those under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), except the City of London. The Municipal Corporations Act, 1883 (46 & 47 Vict. c. 18), destroyed all the boroughs reported on, which were not within the Act of 1882. Hemel Hempstead, which seems to have escaped the notice of the commissioners on whose report the Act of 1835 (5 & 6 Will. 4, c. 76) was founded, obtained a new charter in 1898.

(*u*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 165 (2).

(*a*) *Ibid.*, s. 158 (1).

(*b*) *Ibid.*, s. 165 (1).

(*c*) *Ibid.*, s. 166 (1).

(*d*) Recorders, Stipendiary Magistrates, and Clerks of the Peace Act, 1906 (6 Edw. 7, c. 46), s. 1 (4).

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 168.

(*f*) *Ibid.*, s. 167.

(*g*) *Ibid.*, s. 165 (3.)

SUB-SECT. 2.—*Jurisdiction.*

SECT. 2. Quarter Sessions.

(1) *Criminal.*

170. The criminal jurisdiction of quarter sessions is both original and appellate. The original jurisdiction is to hear and determine at quarter sessions or any adjournment thereof, or at general sessions, an indictment, information or presentment for any offence committed within the county, or justiceable therein, with certain exceptions (*h*). Original criminal jurisdiction of quarter sessions.

The court has also jurisdiction to sentence incorrigible rogues who are sent from courts of petty sessions (*i*).

171. The appellate jurisdiction lies from courts of summary jurisdiction, and arises where it is given by some particular statute, and from a conviction and sentence ordering imprisonment without the option of a fine (*k*), except where the conviction is under the Summary Jurisdiction Act, 1879 (*l*). There is no appeal where a person has pleaded guilty or has elected to be tried summarily for an indictable offence (*m*). Appellate criminal jurisdiction.

The criminal jurisdiction of borough quarter sessions is co-extensive with that of county quarter sessions (*a*).

(2) *Civil.*

172. The present original civil jurisdiction of quarter sessions is now restricted (*b*) to the following matters: (1) Licensing—the refusal of an existing licence, on any ground other than that the licensed premises have been ill-conducted or are structurally deficient or unsuitable, or on grounds connected with the character or fitness of the proposed licensee, or on the ground that the renewal would be void (*c*); to impose a rate of charges on licences for the purpose of compensation for licences absorbed (*d*); to confirm new licences and any other powers of the former county licensing committee, to attach conditions to the grant of a licence, or to grant a licence for a term of years (*e*). This jurisdiction belongs to county quarter sessions, but in the case of county boroughs is exercisable by the whole body of the justices acting in and for the borough (*f*). (2) Highways—orders for diverting or closing highways made on the view and certificate of justices not appealed against (*g*). (3) Prisons—to appoint a visiting committee of Original civil jurisdiction.

(*h*) For the crimes and offences that are not triable at quarter sessions, see title CRIMINAL LAW AND PROCEDURE, p. 225, *post*.
(*i*) Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 5; and title MAGISTRATES.
(*k*) Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 19.
(*l*) *Ibid.*
(*m*) *R.* v. *London Justices, Ex parte Lambert*, [1892] 1 Q. B. 664.
(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 165 (3).
(*b*) A large part of the civil jurisdiction of quarter sessions was transferred to the county council by the Local Government Act, 1888 (51 & 52 Vict. c. 41); see title LOCAL GOVERNMENT.
(*c*) Licensing Act, 1904 (4 Edw. 7, c. 23), s. 1 (1).
(*d*) *Ibid.*, s. 3.
(*e*) *Ibid.*, s. 4.
(*f*) *Ibid.*, s. 8.
(*g*) Highway Act, 1835 (5 & 6 Will. 4, c. 50), ss. 85—91.

SECT. 2. Quarter Sessions.

justices (*h*). (4) Clergy discipline—to elect triennially five justices on the panel of assessors to try criminal clerks (*i*). (5) Lunatics—to select justices to exercise the judicial authority as to lunatics under the Lunacy Act, 1890 (*j*). (6) Outside places which are within the immediate jurisdiction of the Lunacy Commissioners (*k*) to select three justices and one or more medical practitioners to visit licensed houses for lunatics (*l*), and to license houses for the reception of lunatics (*m*).

Appellate civil jurisdiction.

173. The appellate civil jurisdiction is extensive. The most usual subjects of appeals are bastardy orders (*n*); rating appeals (*o*); settlement of paupers and other poor law matters (*p*); appeals from orders to divert or close highways (*q*); refusal to renew or transfer a licence (*a*); and against the appointment of overseers (*b*).

SECT. 3.—*Special Sessions.*

Special sessions.

174. Special sessions are meetings of justices convened for the purpose of executing some statutory authority, which is exercisable by justices out of quarter sessions (*c*). Special sessions are held for special sessional divisions, which are fixed and may be altered from time to time by quarter sessions (*d*). Notice of the special sessions must be given to all the justices who are usually resident or acting as such within the boundaries of the division (*e*).

In some cases the times for holding special sessions for particular purposes are prescribed by statute. Special sessions for appointing overseers in urban parishes must be held on 25th March, or within fourteen days after (*f*); licensing (or brewster) sessions must be held within the first fourteen days of February, and every adjournment

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(*h*) Prison Act, 1877 (40 & 41 Vict. c. 21), s. 13.
(*i*) Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32).
(*j*) Lunacy Act, 1890 (53 Vict. c. 5), ss. 9, 10.
(*k*) *Ibid.*, s. 208, Sched. III.; namely, the cities of London and Westminster, the counties of London and Middlesex, and Barnes, Kew Green etc., and every place within seven miles from any part of the cities of London and Westminster, or of the borough of Southwark.
(*l*) *Ibid.*, s. 177.
(*m*) *Ibid.*, ss. 207—221.
(*n*) See title BASTARDY, Vol. II., p. 426.
(*o*) See title RATES AND RATING.
(*p*) See title POOR LAW.
(*q*) See title HIGHWAYS, STREETS AND BRIDGES.
(*a*) See title INTOXICATING LIQUORS.
(*b*) See title POOR LAW.
(*c*) See Wharton's Law Lexicon, *sub voce* Sessions.
(*d*) Division of Counties Act, 1828 (9 Geo. 4, c. 43); Petty Sessional Divisions Act, 1836 (6 & 7 Will. 4, c. 12).
(*e*) "In all cases in which special sessions are required to be holden for any division of any county or place, if notice of the intended holding of such special sessions be signed by any one justice of the peace usually acting within such division, and if a copy of such notice be sent by post a reasonable time before the day on which such sessions are to be holden addressed to each justice of the peace resident and usually acting within such division, at his residence in such division, such notice shall be deemed to have been duly given to or served on each such justice of the peace, any law or custom to the contrary notwithstanding" (County Rates Act, 1844 (7 & 8 Vict. c. 33), s. 7).
(*f*) Poor Law (Overseers) Act, 1814 (54 Geo. 3. c. 91).

thereof must be held within one month of the date on which the sessions were held (*g*). Special sessions, to fix not less than eight nor more than twelve days for the holding of special sessions for highway purposes, must be held within fourteen days after 20th March (*h*). SECT. 3. Special Sessions.

Special sessions may not be held on premises licensed for the sale of intoxicating liquors (*i*).

There is no general statutory power to adjourn special sessions (except the general annual licensing meeting), but the hearing of any matter may be adjourned. Two justices must be present to constitute special sessions.

175. The jurisdiction of special sessions is entirely statutory. It includes highway purposes (*k*) and appointment of surveyors of highways (*l*), rating appeals (*m*), the general annual licensing meeting (*n*) (which also grants billiard licences) (*o*), sessions for the transfer of licences for the sale of intoxicating liquors (*p*) and for billiards (*q*), and the appointment of overseers in urban parishes (*r*). Jurisdiction.

In boroughs having a separate commission of the peace there is also jurisdiction to grant licences for stage plays (*s*).

SECT. 4.—*Courts of Gaol Delivery and Oyer and Terminer.*

176. Courts of gaol delivery and oyer and terminer are held at the assizes when criminal business is taken (*t*). These courts are now part of the King's Bench Division of the High Court of Justice (*a*). Assizes.

SECT. 5.—*The Central Criminal Court.*

SUB-SECT. 1.—*Constitution.*

177. The Central Criminal Court was constituted in 1834 (*b*), and took the place of the former sessions at the Old Bailey which had been held from very early times under special commissions of Constitution of Central Criminal Court.

(*g*) Licensing Act, 1902 (2 Edw. 7, c. 28), s. 14 (1).
(*h*) Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 45.
(*i*) Licensing Act, 1902 (2 Edw. 7, c. 28), s. 21.
(*k*) Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 45; see title HIGHWAYS, STREETS AND BRIDGES.
(*l*) *Ibid.*, s. 11; see title HIGHWAYS, STREETS AND BRIDGES.
(*m*) Parochial Assessments Act, 1836 (6 & 7 Will. 4, c. 96), s. 6; see title RATES AND RATING.
(*n*) Alehouse Act, 1828 (9 Geo. 4, c. 61), s. 1; see title INTOXICATING LIQUORS.
(*o*) Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 10.
(*p*) Alehouse Act, 1828 (9 Geo. 4, c. 61), ss. 9, 12, 14; Licensing Act, 1842 (5 & 6 Vict. c. 44), s. 1; Wine and Beerhouse Act Amendment Act, 1870 (33 & 34 Vict. c. 29), s. 4 (4), (5); Licensing Act, 1872 (35 & 36 Vict. c. 94), ss. 40, 70; Licensing Act, 1902 (2 Edw. 7, c. 28), s. 16. See title INTOXICATING LIQUORS.
(*q*) Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 10.
(*r*) Poor Relief Act, 1601 (43 Eliz. c. 2), ss. 1, 9, 10; Poor Law (Overseers) Act, 1814 (54 Geo. 3, c. 91).
(*s*) Theatres Act, 1843 (6 & 7 Vict. c. 68), s. 5; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 7 (a). See title THEATRES ETC.
(*t*) See p. 72, *ante;* and title CRIMINAL LAW AND PROCEDURE, p. 266, *post.*
(*a*) Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 34.
(*b*) Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36).

SECT. 5. The Central Criminal Court.

gaol delivery for Newgate and of oyer and terminer for the city of London and the county of Middlesex (*c*).

The court sits under a general commission of gaol delivery and oyer and terminer; and has power and jurisdiction to proceed on the commission until it is renewed (*d*). The court is a branch of the High Court of Justice (*e*).

SUB-SECT. 2.—*Jurisdiction.*

Jurisdiction.

178. The jurisdiction of the Central Criminal Court extends over all treasons, murders, felonies, and misdemeanours committed within the city of London and county of Middlesex (*f*) and the county of London (*g*), and also so much of the county of Essex as is within the parishes of Barking, East Ham, West Ham, Little Ilford, Low Layton, Walthamstow, Wanstead St. Mary, Woodford and Chingford, the hamlet of Mottingham, in the county of Kent, and so much of the county of Surrey as is within the parishes of Barnes, Merton, Mortlake, Wimbledon, Kew and Richmond (*h*). This district is to be taken as one county for the purpose of venue, which is to be laid as "Central Criminal Court to wit" (*i*).

Venue.

His Majesty has power by Order in Council to extend the district of the Central Criminal Court in the months of November, December and January (*k*), and March, April and May (*l*), to any neighbouring county or part of a county mentioned in the order.

Offences committed on the high seas.

179. The Central Criminal Court has also jurisdiction to hear and determine any offences committed or alleged to be committed on the high seas or elsewhere within the jurisdiction of the Admiralty of England (*m*), and also murders or manslaughters of persons subject to military law alleged to be committed by persons subject to such law (*n*).

Special jurisdiction.

180. If the King's Bench Division make an order to that effect, the Central Criminal Court is to try any particular offence committed outside the jurisdiction of the court, whether the indictment

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(*c*) The Secretaries of State and the Attorney- and Solicitor- General were included in the commissions. Sentences of death had to be reported to the King until the Central Criminal Court Act, 1837 (7 Will. 4 & 1 Vict. c. 77). Under a charter of Henry I. the citizens of London were empowered to have their own justices to hold pleas of the Crown, and no citizen could be impleaded on a plea of the Crown except in the City Court of Record (Pulling's Laws and Customs of London, 209, note). Under the Charter of Edward III. (1327) the mayor was constituted a justice of gaol delivery.

(*d*) Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), s. 2.

(*e*) Judicature Act, 1873 (36 & 37 Vict. c 66), ss. 16, 29; *R.* v. *Parke*, [1903] 2 K. B. 432, at p. 439.

(*f*) *Ibid.*, s. 2.

(*g*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 89 (1).

(*h*) Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), s. 2.

(*i*) *Ibid.*, s. 3.

(*k*) Winter Assizes Act, 1876 (39 & 40 Vict. c. 57), s. 5.

(*l*) Spring Assizes Act, 1879 (42 & 43 Vict. c. 1), s. 2.

(*m*) Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), s. 22. The effect of this enactment is to give to the court all the criminal jurisdiction of the admiral. Since the passing of the Act no admiralty sessions have been held.

(*n*) Jurisdiction in Homicides Act, 1862 (25 & 26 Vict. c. 65); Central Criminal Court (Prisons) Act, 1881 (44 & 45 Vict. c. 64), s. 2.

has been removed into the King's Bench Division of the High Court or not (*o*).

The court has also jurisdiction to try indictments under the Corrupt Practices Act, 1883 (*p*), which have been instituted in or removed into the High Court, if, on the suggestion of the Attorney-General, the High Court shall so order (*q*).

City of London Quarter sessions.

181. The jurisdiction of the Central Criminal Court has in practice superseded the criminal jurisdiction of the quarter sessions for the city of London and of those for the borough of Southwark, and all indictments found in the city and borough are tried at the Old Bailey (*r*).

SUB-SECT. 3.—*Judges.*

The commissioners.

182. The persons to be named in the commission are the Lord Mayor of the city of London, the Lord Chancellor or Lord Keeper of the Great Seal, all the judges of the King's Bench Division, the Dean of the Arches, the aldermen of the city of London, the Recorder, the Common Serjeant, the judges of the City of London Court (*a*), and any person who has been Lord Chancellor, Lord Keeper, or a judge of the King's Bench Division, together with such others as His Majesty shall name therein (*b*).

The judges.

183. In practice the Recorder and Common Serjeant sit as judges of the court, assisted, if necessary, by one or both of the judges of the City of London Court. During the sittings a judge of the King's Bench Division, according to a rota, attends to try charges of murder and other serious crimes. The lord mayor, although in theory the first commissioner, takes no part in the proceedings, but the lord mayor or one of the aldermen must be in the building to form a quorum when only one judicial commissioner is sitting (*c*).

SUB-SECT. 4.—*Sittings.*

Sittings.

184. The court is directed to sit at least twelve times in the year (and oftener if need be) (*d*), at times to be directed by four or more of the judges of the High Court (*e*). In practice there are twelve sessions. The court does not sit in the month of August. The sessions usually begin on a Tuesday, but sometimes on a Monday.

SUB-SECT. 5.—*Officers.*

Officers of the court.

185. The officers of the Central Criminal Court are the clerk of the court, with a deputy, who is also the first clerk of arraigns, a second and third clerk of arraigns, a clerk of indictments, with an

(*o*) Central Criminal Court Act, 1856 (19 & 20 Vict. c. 16), ss. 1—3, 15, 17.
(*p*) 46 & 47 Vict. c. 51.
(*q*) *Ibid.*, s. 50.
(*r*) See pp. 177, 203, *post.*
(*a*) See title COUNTY COURTS, Vol. VIII., p. 415.
(*b*) Central Criminal Court Act, 1834 (4 & 5 Vict. c. 36), s. 1.
(*c*) *Ibid.*, s. 2.
(*d*) *Ibid.*, s. 15.
(*e*) Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 18.

SECT. 5. The Central Criminal Court.

assistant, and a staff of clerks. The duties of these officers are similar to those of the clerks of assize, clerks of arraigns etc. on the circuits (*f*).

SECT. 6.—*The Court of the Admiral of England.*

Jurisdiction of the Admiral of England.

186. The territorial limits of the jurisdiction of the Admiral of England are the seas or any other haven, river, or creek or place, where the admiral or admirals have or pretend to have power, authority or jurisdiction (*g*). But places within the bodies of counties as well by land as by water are excluded, except as to homicide or mayhem done in great ships, being and hovering in the main stream of great rivers only beneath the bridges of the same rivers nigh to the sea, and in none other places of the same rivers (*h*). In some old printed copies of the statutes the word "pointz" (*i.e.*, points) occurs instead of "ponts" (bridges), but ponts appears to be the correct reading (*i*).

The sole jurisdiction to try treasons, piracies, felonies, robberies, murders, confederacies, and other offences committed on the high seas or elsewhere within the jurisdiction of the Admiral of England was formerly exercised under a commission under the Great Seal directed to the Admiral, his deputies and others, empowering them to try the same according to the common law as if they had been committed within the realm (*k*). In the case of the Cinque Ports, however, the commission was to be directed to the lord warden (*l*).

Concurrent jurisdiction, however, was given in 1835 (*m*) to the Central Criminal Court (*n*), and in 1844 to the courts of oyer and terminer and gaol delivery (*o*). Since the passing of those Acts no admiralty sessions have been held (*p*).

SECT. 7.—*Special Commissions.*

Special commissions.

187. In case a speedy trial of certain offences is necessary the Crown may issue a special commission of oyer and terminer and gaol delivery to particular judges of the King's Bench Division to hear and determine the trial of such offences. In the case of extortion and other misdemeanour being charged against the Governor-General of India, the Lieutenant-Governor, the chief or other justices of the High Courts and other public officers in India, the trial may be had before a special commission consisting of four peers chosen by lot, after thirteen challenges have been exhausted, from a list of twenty-six peers chosen by the House at the commencement of each session, and six members of the House of Commons, chosen by lot after twenty challenges are exhausted, from a list of forty

(*f*) See p. 73, *ante*.
(*g*) Offences at Sea Act, 1536 (28 Hen. 8, c. 15).
(*h*) 15 Ric. 2. c. 3.
(*i*) See Moore (K. B.), 892; *Leigh* v. *Burley* (1609), Owen, 122.
(*k*) Offences at Sea Act, 1536 (28 Hen. 8, c. 15).
(*l*) *Ibid.*, s. 5. See p. 127, *post*.
(*m*) Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), s. 22.
(*n*) Admiralty Offences Act, 1844 (7 & 8 Vict. c. 2), ss. 1, 2.
(*o*) See p. 87, *ante*.
(*p*) See title ADMIRALTY, Vol. I., p. 59.

members chosen by the House, together with three judges of the King's Bench Division (*q*).

SECT. 7. Special Commissions.

188. A statute of 1414 (*r*) provides that in case of default on the part of justices of the peace, justices of assize, the sheriff or the under-sheriff, to properly execute their duties in case of riots, assemblies, and routs (*s*), a commission under the Great Seal shall issue to inquire with a jury (to be summoned by the coroner (*t*) if the sheriff is in default) into the riot, assembly, or rout, and into the default of the justices of the peace, justices of assize, sheriff, or under-sheriff, and to return the inquest into the Chancery (*u*).

Default of justices and others.

SECT. 8.—*The Court of Criminal Appeal.*

SUB-SECT. 1.—*Constitution and Jurisdiction.*

189. The Court of Criminal Appeal was constituted in 1907 (*x*) as a superior court of record (*y*), and superseded the former Court of Crown Cases Reserved (*a*) and the proceedings in the King's Bench Division on writs of error (*b*) from courts of assize or from the Central Criminal Court.

Court of Criminal Appeal.

The Court has jurisdiction to entertain appeals by persons convicted on indictments, criminal informations, coroners' inquisitions, and by persons dealt with at quarter sessions under the Vagrancy Act, 1824 (*c*), as incorrigible rogues (*d*):—(1) on any ground of appeal which involves a question of law alone; (2) by leave of the court or on a certificate from the judge who tried the case on any ground of appeal which involves a question of fact alone, or a question of mixed fact and law, or any other ground which appears to the court to be sufficient; (3) with the leave of the Court of Criminal Appeal against the sentence passed on conviction, unless the sentence is one fixed by law (*d*).

The court has the same power to deal with a recommendation for an expulsion order against an alien as it has with sentences, and also power to make such recommendations (*e*).

(*q*) East India Company Act, 1784 (24 Geo. 3, sess. 2, c. 25), ss. 64—83; East India Company Act, 1786 (26 Geo. 3, c. 57).

(*r*) 2 Hen. 5, stat. 1, c. 8.

(*s*) Under 13 Hen. 4, c. 7.

(*t*) See title CORONERS, Vol. VIII., p. 248.

(*u*) See 4 Co. Inst. 184.

(*x*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23). For the law governing appeals and the procedure of the Court, see title CRIMINAL LAW AND PROCEDURE, p. 432, *post*.

(*y*) *Ibid.*, s. 1 (7).

(*a*) Under the Crown Cases Act, 1848 (11 & 12 Vict. c. 78), the judge at a trial under a commission of oyer and terminer or of gaol delivery, or the justices at quarter sessions, had a discretion to reserve any point of law. Such a point of law was argued before a court consisting of five or more judges of the High Court, of whom the Lord Chief Justice was to be one (except in case of his being prevented by illness or otherwise from attending (Judicature Act, 1881 (44 & 45 Vict. c. 68), s. 15).

(*b*) Writs of error are abolished by the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), ss. 20, 23 (3), in the case of persons convicted after 18th April, 1908.

(*c*) 5 Geo. 4, c. 83.

(*d*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20 (2); but only as to sentence (*R.* v. *Brown* (1908), 1 Cr. App. Rep. 85; *R.* v. *Johnson*, [1909] 1 K. B. 439, C. C. A.

(*e*) *Ibid.*, s. 21; and see title ALIENS, Vol. I., p. 323.

SECT. 8. The Court of Criminal Appeal.

The court has not jurisdiction to deal with convictions on indictments at common law for the non-repair or obstruction of highways (*f*), nor with convictions of peers or peeresses, or other persons claiming the privilege of peerage convicted of any offence not now lawfully triable by a court of assize (*g*). On an appeal the court has no jurisdiction to order a new trial (*h*), but if a judge should reserve a case for the opinion of the court under the jurisdiction transferred from the Court of Crown Cases Reserved, the court may possibly have power to grant a *venire de novo* (*i*).

SUB-SECT. 2.—*Judges and Sittings.*

Constitution of the court.

190. The Lord Chief Justice of England and all the puisne judges of the King's Bench Division are the judges of the court (*k*).

The court as duly constituted, consists of not less than three judges and of an uneven number of judges. The court, if the Lord Chief Justice so directs, may sit in two or more divisions (*l*). The court sits in London, except when the Lord Chief Justice gives a special direction that it shall sit elsewhere (*l*). The Lord Chief Justice, or in his absence the senior judge, presides (*m*). The determination of appeals is by the majority of the judges sitting (*n*).

There is only one judgment, pronounced by the president or such other member of the court hearing the case as the president directs, except in the case of questions of law where, in the opinion of the court, it is convenient that separate judgments should be pronounced (*o*).

Power to make rules.

191. The Lord Chief Justice and the judges of the court, or any three of such judges, have power, subject to the approval of the Lord Chancellor, to make rules of court (*p*), with the advice and

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(*f*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20 (3). The appeal in such cases is as if the conviction were a verdict in a civil action tried at assizes (*ibid.*).

(*g*) *Ibid.*, s. 20 (2).

(*h*) *R.* v. *Dyson*, [1908] 2 K. B. 454, C. C. A.

(*i*) *R.* v. *Yeadon* (1861), Le. & Ca. 81, C. C. R. This case appears to be the only reported instance of a *venire de novo* being granted by the Court of Crown Cases Reserved. The jurisdiction of the King's Bench Division to grant a *venire de novo* on a rule *nisi* does not seem to be affected by the Act.

(*k*) By the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 1 (1), eight judges of the King's Bench Division appointed by the Lord Chief Justice with the consent of the Lord Chancellor, for such period as he thinks desirable in each case, were to be judges of the court, but by the Criminal Appeal (Amendment) Act, 1908 (8 Edw. 7, c. 46), s. 1, all the judges of the King's Bench Division were substituted.

(*l*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 1 (2).

(*m*) *Ibid.*, s. 1 (3).

(*n*) *Ibid.*, s. 1 (4).

(*o*) *Ibid.*, s. 1 (5).

(*p*) *Ibid.*, s. 18 (1). Rules of court have been made under this power as follows:—Criminal Appeal Rules, 1908, dated 17th March, 1908 (Statutory Rules and Orders, 1908, No. 227, L. 6); Additional Rules, dated 27th March, 1908 (Statutory Rules and Orders, 1908, 277, L. 10). The rules deal with: Interpretation and forms, rr. 1—3; notices of appeal, r. 4; shorthand writers and transcript of notes, r. 5; certificate of judge under s. 3, r. 6; appeals where a fine only has been inflicted, r. 7; custody of exhibits used at a trial, r. 8; orders of restitution, rr. 9—12; certificates of conviction, r. 13; notes and reports of

assistance of a committee (*q*). In case the rules affect the governor or other officer of a prison, or any officer having the custody of an appellant, they must also be approved by the Secretary of State. The rules may regulate generally the practice and procedure of the court and the officers of any court before whom an appellant has been convicted (*a*). Rules are to be laid before Parliament forthwith, and if either House within the next thirty days on which the House has sat presents an address praying that the rule may be annulled, His Majesty in Council may annul the rule, without prejudice, however, to the validity of anything previously done thereunder (*b*).

Stating a case.

192. In cases where the grounds of appeal involve a question of law only, the court may direct that a case be stated (*c*) in the same manner as was directed by the Crown Cases Act, 1848 (*d*). If the judge at the trial consents to state a case for the opinion of the court, the procedure under the Crown Cases Act, 1848 (*e*), will be followed. The court has power to hear a case summarily if the registrar is of opinion that the notice of appeal on grounds of law alone does not show any substantial ground of appeal. In such a case, if the court considers that the appeal is frivolous or vexatious, and can be determined without adjourning it for a full hearing, the appeal may be dismissed summarily (*f*).

SUB-SECT. 3.—*Officers.*

The registrar.

193. The master of the Crown Office is registrar of the Court of Criminal Appeal (*g*).

The duties of the registrar are to take the necessary steps for

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judge, rr. 14—16; notice of appeal; time for appealing; abandonment of appeal, rr. 17—24; proceedings before a single judge, r. 25; proceedings under Crown Cases Act, 1848, r. 26; duties of Director of Criminal Prosecutions, rr. 27, 28; bail, rr. 29, 31; inquiry as to means of appellant, r. 30; attendance of warders, r. 31; documents, r. 32; exhibits, r. 33; notifying result of appeals, rr. 34—36; legal aid, rr. 37, 38; copies of documents for appellants, r. 39; witnesses, r. 40; special commissioners, r. 41; cause lists, r. 42; miscellaneous, rr. 43—51.

(*q*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 18 (2). The committee consists of a chairman of quarter sessions, appointed by a Secretary of State; the Permanent Under-Secretary of State for the Home Department; the Director of Public Prosecutions; the registrar of the Court of Criminal Appeal, and a clerk of assize and a clerk of the peace appointed by the Lord Chief Justice, a solicitor appointed by the President of the Law Society, and a barrister appointed by the General Council of the Bar (Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 18 (2)).

(*a*) *Ibid.*, s. 18 (1).

(*b*) *Ibid.*, s. 18 (3).

(*c*) *Ibid.*, s. 20 (4).

(*d*) 11 & 12 Vict. c. 78. See also Criminal Appeal Rules, 1908, r 26, *ubi supra.*

(*e*) *Ibid.*

(*f*) *Ibid.*, s. 15 (2).

(*g*) By s. 2 of the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), the senior master of the Supreme Court (King's Bench Division) was to be the first registrar of the Court. On the occurrence of a vacancy the registrar was to be appointed by the Lord Chief Justice from among the masters of the Supreme Court (King's Bench Division), but by s. 2 of the Criminal Appeal (Amendment) Act, 1908 (8 Edw. 7, c. 46), the master of the Crown Office was substituted.

SECT. 8. The Court of Criminal Appeal.

obtaining a hearing of appeals, and applications of which he receives notice, and to lay before the court all necessary documents, exhibits, and things relating to the proceedings in the court below; to refer to the court for summary decision appeals on grounds of law alone, which appear to him not to show any substantial grounds of appeal; to furnish all necessary forms and instructions relating to appeals to any person who demands the same, and to governors and such other officers of prisons as he thinks fit; and to report to the court or a judge thereof any case in which it appears to him that a solicitor and counsel or counsel only should be assigned to the appellant, although no application has been made for the purpose (*h*).

The registrar is to be provided with such additional staff (if any) as the Lord Chancellor with the concurrence of the Treasury may determine (*i*).

Part VII.—Courts having Jurisdiction in Lunacy.

SECT. 1.—*In General.*

The King as *parens patriæ*.

194. The Statute *De Prerogativa Regis* (*k*), which is declaratory of the common law, declares that the care and custody of the estates and persons of lunatics and idiots is vested in the King. This authority is delegated by royal warrant under the sign manual (*l*) to the Lord High Chancellor in his capacity as Keeper of the Great Seal.

Transfer of jurisdiction.

195. The former Lords Justices of Appeal in Chancery (*m*) had, when acting together, all the jurisdiction of the Lord Chancellor (*n*). Subsequently this jurisdiction was conferred on them when acting separately (*o*). This jurisdiction was transferred on the constitution of the Supreme Court (*p*) to such judge or judges of the High Court of Justice as might be intrusted under the sign manual with the care and commitment of the custody of the persons and estates of lunatics and idiots. This jurisdiction of the judge so

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(*h*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 15.

(*i*) *Ibid.*, s. 2; Criminal Appeal (Amendment) Act, 1908 (8 Edw. 7, c. 46), s. 2 (2). An assistant registrar has been appointed.

(*k*) Of uncertain date (Prerog. Reg., cc. 11, 12 (17 Edw. 2, stat. 2, cc. 9, 10 Ruff.). See title CONSTITUTIONAL LAW, Vol. VI., p. 475).

(*l*) For form of this warrant see Campbell, Lives of the Chancellors, Vol. I., p. 14. The jurisdiction is distinct from that of the Court of Chancery, now transferred to the Supreme Court (see *Murray* v. *Frank* (1779), 2 Dick. 555; *Sherwood* v. *Sanderson* (1815), 19 Ves. 280, 285; see also *Ex parte Lund* (1802), 6 Ves. 781).

(*m*) Appointed under Court of Chancery Act, 1851 (14 & 15 Vict. c. 83).

(*n*) Lunacy Regulation Act, 1853 (16 & 17 Vict. c. 70), s. 2; repealed by the Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 342.

(*o*) Court of Chancery (Officers) Act, 1867 (30 & 31 Vict. c. 87), s. 13; repealed by the Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 342.

(*p*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 108.

intrusted is separate from his jurisdiction as a member of the High Court, as the Judicature Act, 1875 (*q*), expressly provides that this jurisdiction in lunacy shall not be transferred to or vested in the High Court (*r*).

SECT. 2.—*The Lord Chancellor.*

The Lord Chancellor.

196. Besides the statutory jurisdiction of the Lord Chancellor (or other person to whom such a warrant might be directed), the Lord Chancellor appears to exercise an extensive jurisdiction by virtue of his general power as Keeper of the King's Conscience (*s*). This authority arises on the grant of the custody of the person and estate of a lunatic, but the jurisdiction of the Lord Chancellor is not usually exercised at the present time, and recourse is had instead to that of the judge in lunacy. Petitions, however, are addressed to the Lord Chancellor. There is an appeal from orders in lunacy made by the Lord Chancellor to the Court of Appeal (*t*) and thence to the House of Lords (*a*).

Commission of inquiry.

197. The Lord Chancellor issues a general commission of inquiry to the masters in lunacy (*b*), and has power to issue a commission specially to any person or persons alone or in addition to the masters in lunacy (*c*). The Lord Chancellor may make rules for carrying the Lunacy Acts into effect and as to percentages and fees (*d*).

SECT. 3.—*The Judge in Lunacy.*

Jurisdiction of the judge in lunacy.

198. The jurisdiction of the judge in lunacy may be exercised either by the Lord Chancellor or by any one or more of such judges of the Supreme Court as may be intrusted under the sign manual with the care and commitment of the custody of the persons and estates of lunatics (*e*). The Lords Justices of the Court of Appeal (*f*) are the judges who are actually so intrusted.

The judge in lunacy has power by order to direct an inquisition whether a person is of unsound mind and incapable of managing

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(*q*) 38 & 39 Vict. c. 77, s. 7.

(*r*) For the procedure in the courts having jurisdiction in lunacy, see title LUNATICS AND PERSONS OF UNSOUND MIND.

(*s*) *Ex parte Grimstone* (1772), Amb. 706; see also note as to this case to *Oxenden* v. *Compton* (*Lord*) (1793), 4 Bro. C. C. 231, 235; *Re Fitzgerald* (1805), 2 Sch. & Lef. 432, at p. 439. As to the Lord Chancellor, generally, see title CONSTITUTIONAL LAW, Vol. VII., pp. 55 *et seq.*

(*t*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 18 (5).

(*a*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 3. See, generally, title LUNATICS AND PERSONS OF UNSOUND MIND.

(*b*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 112.

(*c*) *Ibid.*, s. 113. As to conditions under which a special commission will be issued, see *Re Braithwaite* (1823), Pope on Lunacy, p. 49.

(*d*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 148, 338; Lunacy Act, 1891 (54 & 55 Vict. c. 65), s. 27. The following rules have been made under these powers:—The Rules in Lunacy, 1892, and the Rules in Lunacy, 1893, and October 9, 1900, printed in Statutory Rules and Orders Revised, Vol. VIII., Lunatic, England, pp. 1, 29.

(*e*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 108.

(*f*) *Re Gist*, [1904] 1 Ch. 398, C. A.

SECT. 3. The Judge in Lunacy.

himself and his affairs (*g*), and to direct whether the inquisition shall be held before a jury when the alleged lunatic demands one (*h*). The judge has also power to direct an inquisition before a jury to be tried as an issue in the High Court (*i*), and to make orders as to the custody of the persons of lunatics so found by inquisition and for the management of their property and estates (*k*).

Some of the powers of the judge in lunacy may, in the case of lunatics the value of whose real and personal property is under £200, be exercised by a county court judge (*l*).

Appeal.

199. There is an appeal from orders of the judge in lunacy to the Court of Appeal (*m*) and thence to the House of Lords (*n*).

SECT. 4.—*The Masters in Lunacy.*

Masters in lunacy.

200. There are two masters in lunacy, who must be barristers of not less than ten years' standing, and are appointed by the Lord Chancellor (*o*). If the inquisition has not been ordered to be tried as an issue in the High Court it is tried before the master with or without a jury, as the case may be (*p*). The masters have power to summon witnesses, to administer oaths, and take affidavits (*q*).

The duties of the registrar in lunacy have been transferred to the masters (*r*).

Inquiries.

201. After a person has been found a lunatic by inquisition the masters hold inquiries as to the property etc. of the lunatic, and certify the result of these inquiries and generally exercise the powers of the judge in lunacy, subject, however, to appeal to him (*s*).

The masters are also *ex-officio* visitors of lunatics so found jointly with the Chancery visitors (*a*).

Offices.

202. The masters in lunacy have offices at the Royal Courts of Justice, with a chief clerk and a staff of first, second, and third class clerks, and a messenger, as well as clerks attached to the taxing department (*b*).

(*g*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 90.
(*h*) *Ibid.*, ss. 91, 92.
(*i*) *Ibid.*, s. 94.
(*k*) *Ibid.*, s. 108 (2).
(*l*) *Ibid.*, s. 132. See title COUNTY COURTS, Vol. VIII., p. 669.
(*m*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 18 (5).
(*n*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 3.
(*o*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 111.
(*p*) *Ibid.*, s. 94.
(*q*) *Ibid.*, s. 114.
(*r*) Lunacy Orders, 1883, rr 7, 8; [1883] W. N., Pt. II., p. 80.
(*s*) Lunacy Act, 1891 (54 & 55 Vict. c. 65), s. 27 (1); Rules in Lunacy, 1892.
(*a*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 166.
(*b*) See *ibid.*, s. 111 (5), (6); and, generally, title LUNATICS AND PERSONS OF UNSOUND MIND.

Part VIII.—Courts-martial.

SECT. 1.—*Naval Courts-martial.*

SECT. 1. Naval Courts-martial.

SUB-SECT. 1.—*Constitution.*

203. Naval courts-martial are composed of not less than five nor more than nine officers, being flag officers, captains, commanders, or lieutenants of His Majesty's navy on full pay, not under twenty-one years of age. For the trial of a flag officer the president of the court must be a flag officer, and the other members not under the rank of captain; for the trial of a captain the president must not be under the rank of captain, and the other members not under the rank of commander; in other cases the president must not be under the rank of captain, and at least two other members must not be under the rank of commander. A court-martial cannot be held unless at least two of His Majesty's ships not being tenders, and commanded by captains, commanders, or lieutenants of His Majesty's navy on full pay, are together at the time (*c*). Composition of naval courts-martial.

204. Courts-martial are held either by order of the Lords of the Admiralty or by the order of officers authorised by commission from the Admiralty to order courts-martial to be held. Any officer holding such commission and being in command of a fleet or squadron may, in case he should detach part of the fleet or squadron under his command, authorise by a commission under his hand the commanding officer of the detachment to order courts-martial (*d*). Authority for holding courts-martial.

Naval courts-martial must be held on board of one of His Majesty's ships or vessels of war (*e*).

SUB-SECT. 2.—*Judge-Advocate of the Fleet.*

205. There were two ancient officers attached to the ancient court of the Lord High Admiral entitled the counsel to the Admiralty and the Judge-Advocate of the Fleet. These two offices are now united. The duties of this officer are to advise the Admiralty upon all legal matters arising out of the administration of military law, to act at a court-martial if appointed to do so by the Admiralty, and to review the proceedings of naval courts-martial in case the Admiralty refer them to him. Judge-Advocate of the Fleet.

206. A deputy judge-advocate is appointed to act at every naval court-martial either by the Admiralty, the commander-in-chief of the fleet or squadron, or the president of the court-martial (*f*). His duties are to give notice of the trial to the prosecutor, to transmit to the prisoner a copy of the charges and of the letter to the commander-in-chief on which the charges are founded, to summon Deputy judge-advocate.

(*c*) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 58 (1)—(7); Naval Discipline Act, 1884 (47 & 48 Vict. c. 39), s. 2.
(*d*) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 58 (9), (12).
(*e*) *Ibid.*, s. 59.
(*f*) *Ibid.*, s. 61.

SECT. 1. Naval Courts-martial.

the witnesses (*g*), to administer the oath to the members of the court (*h*). He is sworn to secrecy as to the vote of any particular member of the court (*i*); he administers the oath to witnesses (*k*). He does not act as prosecutor, but if there is no prosecutor, he must ask such questions as will bring the whole case before the court in the fullest manner (*l*). If there is no shorthand writer, he takes down the questions to and answers of witnesses, and also minutes of the proceedings. He is to inform the court as to any informality in its constitution. He has to take care that the prisoner does not suffer any disadvantage from his position as prisoner, or from his ignorance of procedure, or from any other cause, and for that purpose may call witnesses, and put questions to witnesses (*m*). He has to advise the court on points of law (especially as to the admissibility of evidence) and procedure (*n*). He must transmit as soon as possible either the original proceedings or an authenticated copy thereof to the commander-in-chief (*o*).

SUB-SECT. 3.—*Jurisdiction.*

Offences triable by naval courts-martial.

207. Naval courts-martial have jurisdiction to try offences against the Naval Discipline Act, 1866 (*p*), wherever committed. These offences are such as relate to misconduct in the presence of the enemy (*q*), communications with the enemy (*r*), neglect of duty (*s*), mutiny (*t*), insubordination (*a*), desertion and absence without leave (*b*), and miscellaneous offences (*c*). They may also try offences punishable by the ordinary law if committed by any person subject to the Naval Discipline Act, 1866, in any harbour, haven, or creek, or on any lake or river, whether in or out of the United Kingdom, or anywhere within the jurisdiction of the Admiralty, or at any place on shore out of

(*g*) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 66.
(*h*) *Ibid.*, s. 63.
(*i*) *Ibid.*, s. 64.
(*k*) King's Regulations for the Navy, chap. xvii., art. 671.
(*l*) *Ibid.*, art. 667.
(*m*) *Ibid.*, art. 673.
(*n*) *Ibid.*, art. 674. As to evidence, see titles CRIMINAL LAW AND PROCEDURE, p. 377, *post*; EVIDENCE.
(*o*) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 69.
(*p*) 29 & 30 Vict. c. 109.
(*q*) *Ibid.*, ss. 2—5.
(*r*) *Ibid.*, ss. 6—8.
(*s*) *Ibid.*, s. 9.
(*t*) *Ibid.*, ss. 10—16.
(*a*) *Ibid.*, ss. 17, 18.
(*b*) *Ibid.*, ss. 19—26.
(*c*) *I.e.*, profane swearing, drunkenness, and immorality (s. 27); cruelty or oppression by officers (s. 28); suffering ships to be improperly lost (s. 29); not defending ships under convoy (s. 30); master of merchant ship not obeying orders of convoying officer (s. 31); taking cargo except bullion or jewels (s. 32); embezzling public stores (s. 33); burning magazines not belonging to enemy (s. 34); making or signing false musters (s. 35); misconduct in hospital (s. 36); stirring up disturbance (s. 37); not sending all papers found in prize to Court of Admiralty (s. 38); taking money etc. out of prize before condemnation (s. 39); ill-using persons on board of prize (s. 40); collusively capturing or restoring prize (s. 41); breaking bulk on board prize with intent to embezzle (s. 42); acts, disorders, or neglects to prejudice of good order and discipline (s. 43).

the United Kingdom, or in any of His Majesty's dockyards, victualling yards, steam factory yards, or on any gun wharf, or in any arsenal, barrack, or hospital belonging to His Majesty, whether in or out of the United Kingdom (*d*). No person, except offenders who have avoided justice or fled from apprehension, can be tried and punished under the Act for any offence after three years from its commission, or after one year from his return to the United Kingdom where he has been absent therefrom during such period of three years (*e*).

Persons subject to jurisdiction.

208. The persons subject to the jurisdiction of naval courts-martial are—(1) all persons in or belonging to His Majesty's navy and borne on the books of any ship in commission (*f*); (2) His Majesty's land forces when embarked on any of His Majesty's ships (*g*) to such extent and under such regulations as are prescribed by Order in Council (*h*); (3) all passengers on His Majesty's ships (*i*) under regulations prescribed by the Admiralty (*k*); (4) all persons borne on the books of hired vessels in time of war (*l*); (5) crews of ships wrecked, lost, or captured until a court-martial is held to inquire into the cause of the wreck, loss, or capture (*m*); (6) naval coast volunteers during exercise and on actual service (*n*); (7) naval volunteers during exercise and actual service (*o*); (8) volunteers belonging to the Royal Naval Volunteer Reserve during exercise and actual service (*p*); (9) officers of reserve to the Royal Navy during exercise and on actual service (*q*).

Punishments.

209. Naval courts-martial have jurisdiction to inflict the punishment of death in cases of murder (*r*), of acting as a spy for the enemy, of treachery, cowardice, mutiny, or desertion to the enemy (*s*), and of burning any magazine etc. not belonging to an enemy, pirate, or rebel (*t*). They have also power, unless expressly prohibited, in the case of offences not punishable with death or penal servitude to inflict punishment according to the laws and customs in such cases used at sea (*a*).

Concurrent jurisdiction of law courts.

210. This jurisdiction does not supersede or affect the authority or

(*d*) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 46.
(*e*) *Ibid.*, s. 54.
(*f*) *Ibid.*, s. 87.
(*g*) *Ibid.*, s. 88.
(*h*) Order in Council of 6th February, 1882, as amended by Order in Council of 30th June, 1890 (Statutory Rules and Orders Revised, Vol. IX., Navy, p. 1); Order in Council as to Royal Marines, 6th February, 1882 (*ibid.*, p. 8).
(*i*) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 89.
(*k*) King's Regulations for the Navy, chap. xix., art. 726.
(*l*) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 90.
(*m*) *Ibid.*, s. 91.
(*n*) Naval Volunteers Act, 1853 (16 & 17 Vict. c. 73), s. 17; Naval Reserve Act, 1900 (63 & 64 Vict. c. 52).
(*o*) Royal Naval Reserve (Volunteer) Act, 1859 (22 & 23 Vict. c. 40), s. 15.
(*p*) *Ibid.*; Naval Forces Act, 1903 (3 Edw. 7, c. 6), s. 1.
(*q*) Officers of Royal Navy Reserve Act, 1863 (26 & 27 Vict. c. 69), s. 2.
(*r*) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 45.
(*s*) *Ibid.*, ss. 2—13, 16, 19.
(*t*) *Ibid.*, s. 34.
(*a*) *Ibid.*, s. 44.

SECT. 1. Naval Courts-martial.

power of any court or tribunal of ordinary civil or criminal jurisdiction in His Majesty's dominions in respect of any offence punishable by the common or statute law, and does not prevent any person being proceeded against and punished in respect of any such offence in the ordinary courts (*b*).

SUB-SECT. 4.—*Procedure.*

Procedure.

211. The procedure of naval courts-martial is regulated by the Naval Discipline Act, 1866 (*c*), and by the King's Regulations for the Navy (*d*), and is dealt with elsewhere (*e*).

SECT. 2.—*Military Courts-martial.*

SUB-SECT. 1.—*Constitution.*

Regimental court-martial.

212. Military courts-martial are either—(1) regimental, (2) district, or (3) general. A regimental court-martial must consist of at least three members, each of whom has held a commission for a year. The president should not be under the rank of captain, except where no such officer is available (*f*). A district court-martial must consist of at least three members, each of whom has held a commission for two years (*g*). A district court-martial must consist as far as practicable of officers of different corps, and can only be composed exclusively of officers of the same regiment of cavalry or the same battalion of infantry, if other officers are not available (*h*). A general court-martial must consist in the United Kingdom, India, Malta, and Gibraltar of not less than nine and elsewhere of not less than five officers, each of whom has held a commission for three whole years, and of whom not less than five must be of a rank not below that of captain (*i*).

District court-martial.

General court-martial.

Convening the court.

213. Regimental courts-martial can be convened by any officer authorised to convene general or district courts-martial, any commanding officer not below the rank of captain, any officer not below the rank of captain when in command of two or more corps or portions of corps, and on board a ship a commanding officer of any rank (*k*).

District courts-martial can be convened by officers authorised to convene general courts-martial and officers deriving from them authority to convene district courts-martial (*l*).

General courts-martial can be convened by His Majesty or an officer deriving authority to do so immediately or mediately from His Majesty (*m*).

(*b*) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 101.
(*c*) *Ibid.*, ss. 58—69, as amended by the Naval Discipline Act, 1884 (47 & 48 Vict. c. 39).
(*d*) King's Regulations for the Navy, chap. xvii., arts. 659—697.
(*e*) See title ROYAL FORCES.
(*f*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 47.
(*g*) *Ibid.*, s. 48 (4).
(*h*) Rules of Procedure, 1907, r. 20A., published by the War Office in the "Manual of Military Law."
(*i*) Army Act, 1881 (44 & 45 Vict. c. 58), ss. 48 (3), 50 (1).
(*k*) *Ibid.*, ss. 47 (1), 50 (1).
(*l*) *Ibid.*, ss. 48 (2), 50 (1), 123 (1) (b).
(*m*) *Ibid.*, s. 48 (1). His Majesty may authorise an officer to convene a general

The president

214. The president of a district or general court-martial is appointed by the authority convening the court. He must not be under the rank of field officer, unless the convening officer is under that rank or a field officer is not available, in which case he may be of the rank of captain, except when in the case of a district court-martial a captain is not available (*a*).

Field general court-martial.

215. Where a complaint is made to any officer in command of a detachment or portion of troops beyond the seas, or to the commanding officer of any corps or portion of a corps on active service, or to any officer in immediate command of a body of forces on active service, that any offence has been committed by a person subject to military law against the property or person of any inhabitant of or resident in such country, then, if, in the opinion of such officer, it is not practicable to try the offence by an ordinary general court-martial, he may, although not authorised to convene a general court-martial, convene a field general court-martial for the trial of the person charged with the offence.

A field general court-martial must consist of not less than three officers, except where three officers are not available, in which case it may consist of two officers (*b*). The convening officer may preside, but if practicable he should appoint another officer to preside, who is, if practicable, not under the rank of captain (*c*).

SUB-SECT. 2.—*Judge-Advocates.*

Judge Advocate-General.

216. A judicial officer called the Judge Advocate-General is appointed by letters patent. He is a permanent official under the orders of, and acting as legal adviser to, the Secretary of State for War (*d*). He never officiates at courts-martial, the principal part of his duties being to review the proceedings of courts-martial to secure the due administration of military justice.

The Judge Advocate-General has by his patent powers both in the United Kingdom and abroad, except in India, to appoint deputies to act as officiating judge-advocates at all courts-martial where it is considered advisable.

Judge advocates.

217. Where the convening officer of a court-martial has authority to appoint a judge-advocate he shall in the case of a general, and may in the case of a district, court-martial appoint a judge-advocate to act at the court-martial (*e*). The duties of a judge-

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court-martial in a particular case, or give to any qualified officer a general authority to convene general courts-martial, or empower any qualified officer to delegate such a general authority to any officer under his command not under the rank of field officer (except in cases where there is no field officer in command) so far as regards persons subject to military law under, or within the territorial limits of, his command (*ibid.*, s. 122 (1)).

(*a*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 48 (9).

(*b*) In this case the jurisdiction as to punishment is limited. See p. 104, *post*.

(*c*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 49.

(*d*) The Judge Advocate-General was formerly a privy councillor and one of the ministry, and advised the Sovereign on the legality of the proceedings of courts-martial. Since 1892 he has ceased to be a privy councillor, nor does he advise the Crown directly (Manual of Military Law, 1907, p. 160).

(*e*) Rules of Procedure, 1907, r. 101. In the United Kingdom convening

SECT. 2. Military Courts-martial.

advocate are similar to those of a judge-advocate at a naval court-martial (*f*).

In the case of general courts-martial, after sentence is awarded, it is the duty of the judge-advocate to sign the proceedings and forward the same in the United Kingdom for confirmation to the Judge Advocate-General's office, and outside the United Kingdom to the general or other officer having power to confirm the findings and sentences of such courts-martial. In the case of district courts-martial the judge-advocate forwards the proceedings to the confirming officer to lay before the Judge Advocate-General for his approval before causing the sentence to be promulgated.

SUB-SECT. 3.—*Jurisdiction.*

Offences triable by military court-martial.

218. Military courts-martial have jurisdiction to try offences in respect of military service (*g*), and also offences against the ordinary criminal law (*h*), committed by persons subject to military law (*i*), wherever they may be committed. But the jurisdiction to try cases of treason, murder, manslaughter, treason felony, and rape is restricted to Gibraltar and places out of His Majesty's dominions, except in the case of persons on active service out of the United Kingdom, or where the offence was committed at a place out of the United Kingdom more than one hundred miles, measured in a

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officers have not this power. Application must be made to the Judge Advocate-General.

(*f*) See p. 97, *ante*.

(*g*) The offences are:—Shamefully surrendering ports, casting away arms, corresponding with or assisting the enemy, having been made prisoner of war, voluntarily serving with or aiding the enemy, and cowardice (Army Act, 1881 (44 & 45 Vict. c. 58), s. 4); on active service leaving the ranks without orders, destroying property without orders, being taken prisoner through neglect of duty etc., or failing to rejoin when able, without due authority holding correspondence with or sending flag of truce to the enemy, spreading reports calculated to create unnecessary alarm (*ibid.*, s. 5); plundering, leaving post without orders, striking sentinels, impeding or refusing to assist provost marshal and his assistants, committing offences against person or property of inhabitants, creating false alarms, treacherously making known pass-words, detaining or appropriating supplies contrary to orders, sentinels sleeping on their posts, or being drunk on them, or leaving them before being relieved (*ibid.*, s. 6); mutiny or sedition, or inciting thereto, or not informing of actual or intended mutiny known to offender (*ibid.*, s. 7); assaulting superior officer or using insubordinate language (*ibid.*, s. 8); disobedience to lawful commands (*ibid.*, s. 9); resisting arrest and soldier breaking out of barracks etc. (*ibid.*, s. 10); neglect to obey orders (*ibid.*, s. 11); desertion, fraudulent enlistment, and absence without leave (*ibid.* ss. 12—15); officers behaving in a scandalous manner (*ibid.*, s. 16); fraud by persons in charge of money or goods (*ibid.*, s. 17); disgraceful conduct of soldiers (*ibid.*, s. 18); drunkenness (*ibid.*, s. 19); offences in relation to persons in custody (*ibid.*, ss. 20—22); offences in relation to property and necessaries (*ibid.*, ss. 23, 24); offences in relation to false documents and statements (*ibid.*, ss. 25—27); offences in relation to courts-martial (*ibid.*, ss. 28, 29); offences in relation to billeting and impressment of carriages (*ibid.*, ss. 30, 31); offences in relation to enlistment (*ibid.*, ss. 32—34); traitorous words (*ibid.*, s. 35); injurious disclosures (*ibid.*, s. 36); ill-using soldiers (*ibid.*, s. 37); duelling and attempted suicide (*ibid.*, s. 38); refusal to deliver prisoner to civil power (*ibid.*, s. 39); conduct to the prejudice of discipline (*ibid.*, s. 40).

(*h*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 41.

(*i*) *Ibid.*, ss. 175—184.

straight line, from any city or town where the offender can be tried by a competent civil court (*k*).

SECT. 2. Military Courts-martial.

Concurrent jurisdiction of civil courts.

219. A person subject to military law may be tried by any competent civil court in His Majesty's dominions for any offence for which he would be liable if he were not subject to military law (*l*). If he has been previously tried for the same offence by a court-martial, the civil court must, in awarding punishment, have regard to the military punishment he may already have undergone (*m*). Where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he is not liable to be tried for that offence by court-martial (*n*). And he is not so liable if he has been previously acquitted or convicted of the same offence by a court-martial (*o*).

Persons subject to the jurisdiction.

220. A regimental court-martial has not jurisdiction to try an officer (*a*) or a warrant officer not holding an honorary commission (*b*), nor to award the punishment of death, penal servitude, or imprisonment, or of detention in excess of forty-two days, or of discharge with ignominy (*c*).

A district court-martial has jurisdiction to try all persons subject to military law, except such as are subject to military law as officers (*d*), for any offence under the Army Act, 1881, but has not jurisdiction to award the punishment of death or penal servitude(*e*).

A general court-martial has jurisdiction to try all persons subject to military law, whether as officers or not, for any offence under the Army Act, 1881, and to award the punishment of death for treason and murder (*f*) and for treachery, cowardice, wilful defiance of authority, assaulting superior officers in the execution of their duty, mutiny (*g*) or complicity therein, or not informing of any actual or intended mutiny of which the offender knows, or on active service plundering or committing offences against the property or person of the inhabitants, striking a sentinel, giving false alarms, sentinels sleeping or being drunk on their posts or leaving them before being regularly relieved, and desertion (*g*), and to award the punishment of penal servitude when applicable. Sentence of death is not to be passed without the concurrence of two-thirds of the members of the court-martial (*h*).

(*k*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 41.
(*l*) *Ibid.*, s. 41 (b).
(*m*) *Ibid.*, s. 162 (1).
(*n*) *Ibid.*, s. 162 (6).
(*o*) *Ibid.*, s. 157.
(*a*) That is, persons subject to military law as officers (s. 175), warrant officers and others holding honorary commissions.
(*b*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 182 (1).
(*c*) *Ibid.*, s. 47 (5).
(*d*) *Ibid.*, s. 175.
(*e*) *Ibid.*, s. 48 (6).
(*f*) *Ibid.*, s. 41 (1), (2).
(*g*) *Ibid.*, ss. 4, 6—9, 12.
(*h*) *Ibid.*, s. 48 (8).

SECT. 2. Military Courts-martial.

A field general court-martial has jurisdiction to try any person subject to military law who is under the command of the convening officer, and may award any sentence which a general court-martial is competent to award for the offence. It can only award sentence of death with the concurrence of all its members. If the court consists of less than three members, the sentence must not exceed field punishment (*i*) or imprisonment (*k*).

Confirmation of findings and sentences.

221. The findings and sentences of courts-martial require to be confirmed as follows: in the case of regimental courts-martial by the convening officer, or the officer having authority to convene such courts at the date of the submission of the finding and sentence; in the case of district courts-martial by an officer authorised to convene general courts-martial, or some officer deriving authority to confirm the findings and sentences of district courts-martial (*l*) from an officer authorised to convene general courts-martial; in the case of general courts-martial by His Majesty or some officer deriving authority to confirm the findings and sentences of general courts-martial immediately or mediately (*m*) from His Majesty (*n*). The confirming authority may send the finding and sentence back for revision once, but not more than once. The sentence cannot be increased on revision (*o*). A finding of acquittal does not require confirmation (*p*). Sentence of death or of penal servitude for civil offences also requires confirmation, in India by the Governor-General and in colonies by the governor (*q*).

SUB-SECT. 4.—*Procedure.*

Procedure.

222. The procedure of military courts-martial is regulated by the Army Act, 1881 (*r*), and by the rules of procedure, 1907 (*s*), and is dealt with elsewhere (*t*).

SECT. 3.—*Courts-martial under Martial Law.*

Martial law.

223. When His Majesty's forces are in armed occupation of hostile territory, it is competent to His Majesty's commanders to declare that martial law shall prevail in such territory, and to lay down rules which they deem essential for the preservation of His

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(*i*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 44 (5); Rules for Field Punishment, Manual of Military Law, 1907, p. 598.
(*k*) *Ibid.*, s. 49.
(*l*) An officer authorised to convene general courts-martial may give this authority to any officer to whom he delegates power to convene general courts-martial (*ibid.*, s. 123 (1) (c)). See p. 100, note (*m*), *ante*.
(*m*) His Majesty may empower any qualified officer to confirm the findings and sentences of general courts-martial or to delegate this power to any officer to whom he could delegate a power to convene general courts-martial (*ibid.*, s. 122 (1) (d), (e)). See p. 100, note (*m*), *ante*.
(*n*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 54 (1).
(*o*) *Ibid.*, s. 54 (2).
(*p*) *Ibid.*, s. 54 (3).
(*q*) *Ibid.*, s. 54 (7), (8), (9).
(*r*) 44 & 45 Vict. c. 58.
(*s*) Manual of Military Law, 1907, pp. 448—508.
(*t*) See title ROYAL FORCES.

Majesty's forces and military stores. In such a case, the jurisdiction of courts-martial extends over all persons resorting to this territory (not being in the military or naval service of an independent Sovereign (*u*)). This extends to the case of one of His Majesty's ships being at a place inhabited by savages, where no law prevails, and where no redress for outrage can be obtained from any Government, or in any tribunal (*x*). In the case of an insurrection, similar powers may arise during the continuance of the necessity (*y*).

SECT. 3. **Courts-martial under Martial Law.**

Part IX.—Miscellaneous Maritime Courts.

224. In addition to the Admiralty jurisdiction exercised by the Judicial Committee of the Privy Council (*a*), the Supreme Court of Judicature (*b*) and other courts already referred to in this article, there are various courts exercising maritime jurisdiction which have been or will be described in other articles, such as the Cinque Ports Court of Admiralty (*c*), the County Courts (*d*), the Liverpool Court of Passage (*e*), the Cinque Ports Salvage Commissioners (*f*), various Colonial Courts of Admiralty (*g*), Prize Courts (*h*), and it is not thought necessary to make further reference to these.

Maritime courts.

SECT. 1.—*Local Courts of Admiralty.*

225. Many of the seaport boroughs had in their charters a grant of a court of Admiralty (*i*), but in 1835 all local courts, except that of the Cinque Ports, were deprived of any Admiralty jurisdiction they might have (*k*). Certain titular and honorific rights, however, still appear to survive. For instance, the mayor of Southampton has a silver oar as *insigne* of a titular admiralty, and is entitled to receive the first visit from foreign men-of-war visiting the port, and the mayors of some other ports have a similar privilege.

Borough courts of Admiralty.

(*u*) Opinions of the Law Officers (Stephens, Gifford, and Smith, Manual of Naval Law, 1901, p. 133).

(*x*) Opinion of the Law Officers (Parliamentary Debates, 3rd ser., Vol. CCXXXVII., p. 533).

(*y*) *R.* v. *Eyre* (1868), Finlason's Report. This report of the charge of BLACKBURN, J., is printed from the shorthand writer's notes as corrected by the judge. As to martial law, see title CONSTITUTIONAL LAW, Vol. VI., p. 403.

(*a*) See p. 28, *ante*.

(*b*) See p. 62, *ante*.

(*c*) See title ADMIRALTY, Vol. I., p. 139.

(*d*) *Ibid.*, p. 127.

(*e*) *Ibid.*, p. 140.

(*f*) *Ibid.*, p. 139.

(*g*) *Ibid.*, p. 140.

(*h*) See title PRIZE LAW AND JURISDICTION.

(*i*) Some maritime towns had from a very early period courts of the seaport, which administered the law maritime. Disputes as to jurisdiction arose between the admiral's court and these courts, which led to two statutes ((1388) 13 Ric. 2, st. 1, c. 5; (1390) 15 Ric. 2, st. 2, c. 3) defining and restricting the jurisdiction of the admiral (Carter, History of English Legal Institutions, 1st ed., p. 168).

(*k*) Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 108.

SECT. 2. Courts of the Vice-Admirals of the Coast.

SECT. 2.—*Courts of the Vice-Admirals of the Coast.*

Vice-admiral of the coast.

226. The sea coast of England and Wales is divided into nineteen districts, for each of which a vice-admiral of the coast can be appointed (*l*). Vice-admirals of the coast represent the Lord High Admiral (or the Lords Commissioners for executing that office) in his capacity so far as it is not concerned with the navy. They are appointed by letters patent under the Great Seal, and the appointment is *durante bene placito* (*m*). The jurisdiction extends up to high-water mark and to the first bridges towards the sea on rivers, and is exercisable by a judge (*a*). The patent of the vice-admiral empowers him to appoint his own officers, excepting, however, the judge, registrar, and marshal of his vice-admiralty court. These excepted officers are appointed by letters patent, but there are none in existence at the present time, and, consequently, although the jurisdiction of these courts of vice-admiralty over causes of action arising in the jurisdiction has never been abolished by statute, there is now no means of executing it. The jurisdiction as to wreck was, however, taken away by the Merchant Shipping Act, 1894 (*b*).

SECT. 3.—*Slave Trade.*

Slave trade.

227. British vessels seized for breaches of the laws against the slave trade, and foreign vessels, if under a treaty or convention (*c*)

(*l*) (1) Northumberland, Durham, and York; (2) Lincoln; (3) Norfolk; (4) Suffolk; (5) Essex; (6) Kent; (7) Sussex; (8) Hampshire; (9) Dorset; (10) Devon; (11) South Cornwall; (12) North Cornwall; (13) Somerset; (14) Gloucester; (15) South Wales; (16) North Wales; (17) Chester; (18) Lancaster; (19) Westmoreland and Cumberland.

(*m*) The form of patent is printed in Baker, Vice-Admiral of the Coast, pp. 50 *et seq.*, where the jurisdiction exercised by the court is stated.

(*a*) By an order of a committee of the Lords and Commons, 1635, the judge was to be a discreet and learned man in the civil laws dwelling or resorting within the circuit of his office, or for want of a civilian one learned in the common laws of the realm dwelling within the same circuit. In 1663 the Duke of York (afterwards James II.), the then Lord High Admiral, issued instructions to the judge of the Court of Admiralty and to the vice-admirals, by which the powers and duties of those officers were regulated. Under these the whole of the judicial powers was directed to be exercised by the judge, but the levying and receiving the perquisites of the office or droits of Admiralty remained with the vice-admirals. These instructions did not apparently interfere with the jurisdiction of the judges of the Vice-Admiralty Courts, as these judges continued to be appointed (Encyclopædia Britannica, Vol. I., pp. 159, 160). The patents confer no jurisdiction in prize matters. See Baker, Vice-Admiral of the Coast, p. 69.

(*b*) 57 & 58 Vict. c. 60, s. 529, re-enacting the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 440.

(*c*) The following have been declared by Order in Council to be existing Slave Trade Treaties within the meaning of the Slave Trade Act, 1873 (36 & 37 Vict. c. 88):—Brussels General Act of 2nd July, 1890; Abyssinia of 3rd June, 1884; Egypt of 4th August, 1877; Germany of 29th March, 1879; Italy of 21st December, 1885, and 14th September, 1889; Johanna of 10th October, 1882; Mohilla of 24th October, 1882; Persia of 2nd March, 1882; Spain of 2nd July, 1890; Turkey of 25th January, 1880, and 3rd March, 1883. All these treaties together with the Orders in Council are printed in Statutory Rules and Orders, Revised, Vol. XI., Slave Trade.

they are liable to be condemned by British tribunals, are amenable to the jurisdiction of the High Court of Admiralty (*d*), the Colonial Courts of Admiralty (*e*), and the Vice-Admiralty Courts, the jurisdiction of which is by their commissions limited in matters relating to the slave trade (*f*).

In certain cases slave trade treaties and conventions contain provisions for the appointment of mixed courts or commissions; in such case His Majesty has power to appoint such commissioners, judges, arbitrators, secretary, registrar and other officers, as are mentioned in such provisions (*g*).

SECT. 4.—*Courts of Survey.*

Courts of survey.

228. A court of survey for a port or district consists of a judge with two assessors. The judge is either a wreck commissioner, a stipendiary or metropolitan police magistrate, a judge of county courts, or other fit person approved by the Home Secretary. But in any special case the Board of Trade may appoint a wreck commissioner to be the judge. The assessors are persons of nautical, engineering, or other special skill and experience, one appointed by the Board of Trade, and the other summoned by the registrar of the court out of a list nominated by the local marine board, or if there is none, by a body of local shipowners or merchants approved by the Home Secretary, or if there is no such list, appointed by the judge (*h*).

Jurisdiction.

229. Courts of survey have jurisdiction to hear appeals by the owners of ships detained by the Board of Trade as unsafe or unseaworthy (*i*), or from a declaration of survey of a passenger steamer (*k*), or by the owner of an emigrant ship from the refusal by an emigration officer of a certificate for clearance (*l*).

SECT. 5.—*Formal Investigation of Shipping Casualties.*

Inquiries as to wrecks etc.

230. The investigation is held either by a court of summary jurisdiction or by a wreck commissioner, according to the direction of the Board of Trade. If a stipendiary magistrate is a member of a local marine board of any place, a formal investigation at that place must be held before him if he happens to be present (*m*). If the investigation involves or appears likely to involve any question as to the cancellation or suspension of the certificate of a master, mate, or engineer, the court must be held with the assistance of not less than two assessors having experience in the merchant

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(*d*) Slave Trade Act, 1873 (36 & 37 Vict. c. 88), s. 5.
(*e*) Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), s. 2.
(*f*) Slave Trade Act, 1873 (36 & 37 Vict. c. 88), ss. 2, 5.
(*g*) *Ibid.*, s. 7.
(*h*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 487, (1), (2), (3).
(*i*) *Ibid.*, s. 459.
(*k*) *Ibid.*, s. 275; Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), s. 75.
(*l*) Merchant Shipping Act, 1894 (57 & 58 Vict. c 60), s. 318. See, further, title SHIPPING AND NAVIGATION.
(*m*) *Ibid.*, s. 476 (1).

SECT. 5. Formal Investigation of Shipping Casualties.

service (*a*) chosen out of a list of persons approved for three years (*b*).

Jurisdiction.

231. The court has jurisdiction to hear the evidence relating to a shipping casualty (*c*), or, if the Board of Trade think fit, loss of life from a fishing vessel's boat (*d*), and to make a report to the Board of Trade containing a full statement of the case and of the opinion of the court thereon, accompanied by such report of or extracts from the evidence, and such observations as the court think fit (*e*). The court has all the powers of a court of summary jurisdiction acting as a court in the exercise of their ordinary jurisdiction (*f*).

The court has power, if one of the assessors concurs in the finding, to cancel or suspend the certificate of a master, mate, or engineer, if the court finds that the loss or abandonment of, or serious damage to any ship, or loss of life has been caused by his wrongful act or default (*g*). This decision must be made in open court (*h*).

SECT. 6.—*Naval Courts.*

SUB-SECT. 1.—*Constitution.*

Naval courts on foreign station.

232. A naval court can be summoned by any officer in command of any of His Majesty's ships on any foreign station, or in the absence of such officer by any consular officer (*i*) in cases where such a court has jurisdiction (*k*). A naval court consists of not more than five nor less than three members, of whom, if possible, one is a British naval officer not below the rank of lieutenant, one a consular officer, and one a master of a British merchant ship, and the rest are either British naval officers, masters of British merchant ships, or British merchants. The court may include the officer summoning it, but not the master or consignee of the ship to which the parties complaining or complained against belong (*l*).

SUB-SECT. 2.—*Jurisdiction.*

Jurisdiction.

233. The jurisdiction of a naval court arises: (1) whenever a complaint is made to the summoning officer, which appears to him to require immediate investigation, by the master of any British ship, or by a certificated mate, or by any one or more of the seamen belonging to such ship; (2) whenever the interest of the owner of any British ship or of the cargo thereof appears to the summoning officer to require it; (3) whenever any British ship is wrecked, abandoned, or otherwise lost at or near the place where the

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(*a*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 466 (4).
(*b*) *Ibid.*, s. 467.
(*c*) *Ibid.*, s. 466 (10).
(*d*) *Ibid.*, s. 468.
(*e*) *Ibid.*, s. 466 (6).
(*f*) *Ibid.*, s. 466 (10).
(*g*) *Ibid.*, s. 470 (1).
(*h*) *Ibid.*, s. 470 (2). See also title SHIPPING AND NAVIGATION.
(*i*) *Ibid.*, s. 480.
(*k*) See *infra*.
(*l*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 481.

summoning officer is, or whenever the crew or part of the crew of any British ship which has been wrecked, abandoned, or lost abroad, arrive at that place (*m*).

A naval court must hear the complaint or other matter brought before them, or investigate the cause of the wreck, abandonment or loss, in such a manner as to give every person against whom any complaint or charge is made an opportunity of making a defence. Naval courts have power to administer oaths, to summon parties and witnesses, and to compel their attendance and the production of documents (*n*).

Powers of court.

234. Naval courts can exercise the following powers: (1) If the court is unanimous that the safety of the ship or crew or the interest of the owner require it, it may remove the master, and, with the consent of the consignee of the ship, appoint another person to act in his stead; (2) where authorised by law (*o*), cancel or suspend the certificate of any master, mate, or engineer; (3) discharge a seaman from his ship; (4) order the whole or any part of the wages of a seaman so discharged to be forfeited either as compensation to the owner, or as a fine to be paid into the exchequer; (5) decide any questions as to wages, fines, or forfeiture arising between the parties; (6) direct that costs incurred in obtaining the imprisonment of any seaman or apprentice in any foreign port may be deducted from his wages; (7) send home for trial masters, seamen, and apprentices charged with offences against property or persons out of His Majesty's dominions, or with offences on the high seas (*p*); (8) punish a master or any of the crew of a British ship for any offence under the Act which is punishable on summary conviction; (9) order a survey of the ship; (10) deal with the costs, and order persons making frivolous or vexatious complaints to pay compensation for any loss or delay caused thereby. Orders made by a naval court within its jurisdiction are conclusive of the rights of the parties (*q*), but sentences of imprisonment must be confirmed by the senior naval or consular officer present at the place.

Report to Board of Trade.

235. A naval court must make a report to the Board of Trade, containing (1) a statement of the proceedings, the order made, and a report of the evidence; (2) an account of the wages of any seaman or apprentice discharged from his ship by the court; (3) in case of an inquiry into a case of wreck or abandonment, a statement of the opinion of the court as to the cause of the casualty, together with any requisite remarks on the conduct of the master and crew (*r*).

(*m*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 480. See also title SHIPPING AND NAVIGATION.

(*n*) *Ibid.*, s. 482.

(*o*) In the same cases as courts holding formal investigations into shipping casualties are authorised to do so (see p. 108, *ante*).

(*p*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 689.

(*q*) *Ibid.*, s. 483.

(*r*) *Ibid.*, s. 484.

PART X. Courts of Escheat.

Courts of escheat.

Part X.—Courts of Escheat.

236. Where any real estate (*s*) is alleged to have escheated (*a*) or been forfeited to the Crown, or to the Sovereign in right of the Duchy of Lancaster, or to the Sovereign or the Prince of Wales in right of the Duchy of Cornwall, a commissioner is or commissioners are appointed under the Great Seal or the wafer Great Seal to hold an inquest touching the real estate or any interest therein escheated or supposed to have escheated (*b*). The inquest is held openly and publicly (*c*) before a jury of twelve (*d*) which is returned and impanelled by the sheriff and sworn by the commissioner (*e*). The attendance of witnesses may be compelled by Crown Office subpœna (*f*). Any person claiming any title to the real property may be heard by himself, attorney, or counsel (*g*). The commissioner may discharge the jury and have a fresh jury returned and impanelled (*h*). In the case of witnesses who are unable to attend or are dead, affidavits and statutory declarations may be accepted (*i*). The commissioner may take the verdict of the majority of the jury (*k*). The inquisition must be in writing or print or both and under the hands and seals of the commissioner or commissioners present and of the jurors concurring (*l*). It should find of whom the land was held and any other material matter specified in the commission (*m*). The commission with the inquisition is returned into the Central Office of the Supreme Court and filed in the Crown Office (*n*). An award of *melius inquirendum* may be awarded on the fiat of the Attorney-General or by order of the Lord Chancellor (*o*). On a *melius inquirendum* the proceedings commence *de novo* in the same manner as before (*p*). The inquest may be traversed by any person claiming any title to the real estate or interest therein (*q*) in manner directed by Rules of the Supreme Court (*r*). Inquisitions are not to

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(*s*) Including the beneficial interests of *cestui que trusts* (Intestates Estates Act, 1884 (47 & 48 Vict. c. 71), s. 4).

(*a*) Where they are not held of a manor under a tenure created before the Statute of Quia Emptores (18 Edw. 1, cc. 1, 2, 3). As to escheat generally, see title REAL PROPERTY AND CHATTELS REAL.

(*b*) The Escheat Procedure Rules, 1889, r. 1, dated 25th July, 1889, made by the Lord Chancellor with assent of the Treasury, pursuant to the Escheat (Procedure) Act, 1887 (50 & 51 Vict. c. 53), s. 2; Statutory Rules and Orders Revised, Vol. IV., Escheat, p. 1.

(*c*) *Ibid.*, r. 3.

(*d*) The commissioner may proceed with not less than nine jurors (*ibid.*, r. 4).

(*e*) *Ibid.*, r. 4.

(*f*) *Ibid.*, r. 5.

(*g*) *Ibid.*, r. 6.

(*h*) *Ibid.*, r. 7.

(*i*) *Ibid.*, r. 8.

(*k*) *Ibid.*, r. 9.

(*l*) *Ibid.*, r. 10.

(*m*) *Ibid.*, r. 11.

(*n*) *Ibid.*, r. 13.

(*o*) *Ibid.*, r. 14.

(*p*) *Ibid.*, r. 15.

(*q*) *Ibid.*, r. 16.

(*r*) No Rules of the Supreme Court have been made in this behalf.

be quashed for informality (*s*). These rules apply to lands held of the Duchy of Cornwall, but not to lands held of the Duchy of Lancaster (*t*). In respect of these latter no rules have been made by the Chancellor of the Duchy (*a*). Any existing practice is therefore preserved (*b*). The commission issues under the seal of the Duchy, and the proceedings are filed in the Chancery of Lancaster.

Part XI.—Forest Courts.

SECT. 1.—*In General.*

Forest courts.

237. The Sovereign is possessed of certain forests (*c*), for the protection of which there are particular laws and officers. For the execution of the forest laws there are four courts appointed: the Attachment or Woodmote, also called the Forty Days' Court; (2) the Regard or Survey of Dogs; (3) the Swainmote; and (4) the Eyre or Justice Seat. The greater number of forests in England have been disafforested, but three (*d*) still remain. In these the forest laws (*e*) are to some extent in force, and the forest courts are still held, although many of their functions are obsolete (*f*). The jurisdiction of forest courts is of a private and special nature, confined to a particular spot, and instituted only to redress particular injuries and nuisances, namely, such as relate to the King's venison (*g*), to the vert (*h*), and to the coverts, and no other trespasses are cognisable by these courts (*i*).

(*s*) Escheat Procedure Rules, 1889, r. 17.

(*t*) *Ibid.*, rr. 19, 20.

(*a*) See generally 4 Co. Inst. 225. The inquest can be held *virtute officii* by an escheator, but no such officers are now appointed in England, although in Ireland the title survives, *e.g.*, escheator of Munster, which is used in respect of Irish members of Parliament in the same way as the office of steward of the Chiltern Hundreds, so as to vacate the seat in Parliament.

(*b*) Escheat (Procedure) Act, 1887 (50 & 51 Vict. c. 53), s. 3 (3).

(*c*) As to Royal Forests and the Forest Courts, see also title CONSTITUTIONAL LAW, Vol. VII., pp. 181 *et seq.*

(*d*) Alice Holt; Forest of Dean; the New Forest.

(*e*) The statutes relating to forests are the following: 25 Edw. 1, Carta de Libertatibus de Forestæ; 34 Edw. 1, Ordinatio de Foresta; Assiza de Foresta, *temp. incert.*; 1 Edw. 3, stat. 2, c. 2; 25 Edw. 3, stat. 5, c. 7; 7 Ric. 2, cc. 3, 4; 7 Hen. 4, c. 1; 4 Hen. 5, stat. 2, c. 1; 22 Edw. 4, c. 7; 27 Hen. 8, c. 7; 32 Hen. 8, c. 35; 16 Car. 1, c. 16. See title CONSTITUTIONAL LAW, Vol. VII., p. 182, note (*r*).

(*f*) As to the decay of the forest courts and the present control of forests, see title CONSTITUTIONAL LAW, Vol. VII., p. 185.

(*g*) See title CONSTITUTIONAL LAW, Vol. VI., pp. 490, 491; Vol. VII., p. 181, note (*q*).

(*h*) See title CONSTITUTIONAL LAW, Vol. VII., p. 181, note (*p*); Stubbs, Select Charters, 347 *et seq.*; Manwood, Treatise of the Forest Laws (1717), 345, 354.

(*i*) See Select Pleas of the Forest, Selden Society, Vol. XIII.

SECT. 2. **The Court of Attachments.**

SECT. 2.—*The Court of Attachments.*

Court of attachments.

238. The Court of Attachments, Woodmote, or Forty Days' Court, should be held before the verderers (*j*) of the forest once in every forty days (*k*). Its jurisdiction is to inquire into all offences committed in the forest, whether against vert or venison (*l*).

Under its ancient jurisdiction this court inquires into and receives attachments and presentments of the foresters and keepers, and enrols them for the purpose of presenting them to the swainmote. The court has no power to convict offenders or to proceed to judgment (*m*), except where the trespass is under the value of fourpence, in which case the verderers in the Court of Attachment have power to assess the fine, and cause the same to be levied to the use of the King, which must be entered on the roll (*n*).

All unlawful encroachments in forests may be inquired into by the verderers in the Court of Attachments; and the persons who made and continued them prosecuted in these courts, and fined by the verderers for every such offence in a sum not exceeding £20, to be recovered before a justice of the peace; and the encroachment may be ordered to be abated. The forest officers may present all encroachments to the court, which is empowered to fine them for neglect. If it is alleged by the defence that the place in question was beyond the limits of the forest, the verderers have no power to determine the cause, but must certify it to the Attorney-General. The right of the Crown to proceed by information or any other legal process is expressly preserved (*o*).

SECT. 3.—*The Court of Regard.*

Court of regard.

239. The Court of Regard or Survey of Dogs was directed to be held every third year (*p*) by the Regarders (*q*) of the Forest to see what dogs are expeditated (*r*) and what not. All dogs (*s*) not expeditated were to be presented and their owners amerced 3*s*. (*a*). This court, although the statute relating to it has not been repealed, has been obsolete for centuries (*b*).

(*j*) See p. 115, *post*.

(*k*) Carta de Foresta (1217), c. 8; see 4 Co. Inst. 289.

(*l*) The rolls of the Court of Attachments of Epping Forest, 1713-1848 are published in four volumes by order of the Epping Forest Commissioners.

(*m*) Manwood, Treatise of the Forest Laws (1717), pp. 23—25.

(*n*) *Ibid.*, p. 25. "But it is to be observed that no man ought to be attached by his body for vert or venison, unlesse he be taken with the manner within the forest, otherwise the attachment must be by his goods" (4 Co. Inst. 289).

(*o*) 52 Geo. 3, c. 161, ss. 11, 13, 15, repealed and re-enacted by the Crown Lands Act, 1829 (10 Geo. 4, c. 50), ss. 100, 102, 103, 104.

(*p*) 4 Co. Inst. 289.

(*q*) See p. 115, *post*

(*r*) "That is, three claws of the forefeet shall be cut off by the skin" (Carta de Foresta, c. 6).

(*s*) Only mastiffs are liable to be expeditated (Manwood, Treatise on the Forest Laws (1717), 112, 113). Formerly no other dogs, except by special grant, were allowed to be kept in a forest (Lewis, Historical Inquiries concerning Forests and Forest Laws, p. 37).

(*a*) Carta de Foresta, c. 6.

(*b*) The Court of Regard had some other duties, see title CONSTITUTIONAL LAW, Vol. VII., p. 183.

SECT. 4.—*The Court of Swainmote.*

Court of Swainmote.

240. The Court of Swainmote (*c*), Sweynmote, Swanimote, or Swainemote was held before the verderers as judges by the steward of the swainmote (*d*) three times in the year, and no more (*e*). All offences against vert (*f*) or venison (*g*) could be presented at the next swainmote before the foresters, verderers, regarders, agisters, and other ministers of the forest (*h*). All freeholders and all other honest and lawful men of the forest were bound to attend (*i*). The pleas in this court were called *placitæ forestæ* (*k*). The jurisdiction extended to offences committed in the purlieus (*l*) of the forest (*m*). After the court was opened the steward charged the jury to inquire into offences concerning—(1) gathering of acorns; (2) agistments to the hurt of deer; (3) assarts (*n*) newly made; (4) browse cut by warden or foresters; (5) burning heath, fern, or ling; (6) straightening of churchways; (7) crabs growing in the forest; (8) deer killed without warrant; (9) dogs; (10) extortion by forest officers; (11) commoning sheep at fawning time; (12) fences; (13) number of foresters; (14) foxes killed without warrant; (15) goats in the forest; (16) hares killed without warrant; (17) taking hawks' or herons' eggs; (18) unringed hogs; (19) unlicensed hogstyes; (20) hunting the King's deer within seven miles of the forest within forty days before or after the King's hunting; (21) inclosures; (22) meers (*o*); (23) mills; (24) mines; (25) nets; (26) pannage (*p*); (27) taking partridges' or pheasants' eggs; (28) pounding cattle out of the county; (29) hunting in the purlieus; (30) purprestures (*q*);

(*c*) "'Swainmote' is derived of *swein*, that is, *Saxonicè*, *minister*, and *mote* or *gemote*, which is *curia*, *i.e. curia ministrorum forestæ*, so called because it is but a preparative for the Justice Seat" (4 Co. Inst. 289).

(*d*) "The steward, custodian, keeper, or lord warden of the forest, was not a judicial officer, although a claim was sometimes made by them to hold the swainmote. The officer here referred to is the steward of the swainmote, who should be a learned man, especially in the laws of the forest" (Manwood, Treatise of the Forest Laws (1717), p. 340).

(*e*) (1217) Carta de Foresta, c. 8. See title CONSTITUTIONAL LAW, Vol. VII., p. 183.

(*f*) See title CONSTITUTIONAL LAW, Vol. VII., p. 181, note (*p*).

(*g*) See *ibid.*, note (*q*).

(*h*) Manwood, Treatise of the Forest Laws (1717), pp. 338, 339.

(*i*) 34 Edw. 1, Ordinatio de Foresta, cc. 1, 2; 1 Edw. 3, stat. 2, c. 2.

(*k*) Manwood, Treatise of the Forest Laws (1717), p. 336.

(*l*) See title CONSTITUTIONAL LAW, Vol. VII., p. 184.

(*m*) Manwood, Treatise of the Forest Laws (1717), p. 344.

(*n*) "*Assertum*, assert, is so called of the effect, as some hold, and is derived, say they, of *ad* and *sero*, *assero*, because of wood grounds, marishes, or waste grounds, that are converted to be sown with corn. . . . Others fetch it other ways; but we hold that it is derived of the French word *essarter*, to grub up, or clear a ground of wood" (4 Co. Inst. 306, 307).

(*o*) "Carrying away or removing any meere, stones, or other metes, marks, or boundaries of the forest" (Manwood, Treatise of the Forest Laws (1717), 342).

(*p*) "*Pannagium* is the mast of such trees, which bear fruit to feed hogs, or the money made of such mast" (Manwood, Treatise of the Forest Laws (1717), p. 227).

(*q*) "A purpresture in the King's forest is any building or inclosure, or using any liberty or privilege there without warrant so to do" (Manwood, *supra*, p. 304). See title CONSTITUTIONAL LAW, Vol. VII., p. 183, note (*p*).

SECT. 4. The Court of Swainmote.

(31) salteries; (32) sheep; (33) sheep-houses; (34) suits and services; (35) surcharge of the forest (*r*); (36) timber or trees cut down and other offences against vert; (37) waifs and strays; (38) straightening ways; (39) abuse of warrants to take vert or venison; (40) getting underwood; and (41) surcharges of the foresters and other ministers of the forest, and their oppressions brought upon the people (*a*).

The Court of Swainmote had only power to try offences, but not to give judgment or to award execution, for that was reserved to the Justice Seat (*b*). Swainmotes are still held, but they are mere formalities. Persons indicted in this court as common malefactors of the King's venison in the forest are liable to be outlawed (*c*).

SECT. 5.—*The Justice Seat.*

The Justice Seat or Eyre.

241. The Justice Seat or Eyre was the principal court of the forest and a court of record (*d*). It was held before the Chief Justice in Eyre or his deputy. On the abolition of the offices of Chief Justice and Justices in Eyre of His Majesty's Forests, Chases, Parks, and Warrens, north and south of Trent respectively (*e*), all the powers and authorities belonging to the said offices were vested in the First Commissioner of Woods (*f*).

No Court of Justice Seat has been held since 1662, and it may be regarded as obsolete, but it may be revived by the King's writ.

At the Justice Seat all trespasses within the forest, all claims of franchises, liberties, or privileges, and all pleas and causes whatever therein arising were heard and determined (*g*).

The court had also jurisdiction to try presentments enrolled in the inferior courts of the forest, and to give judgment on convictions in the Court of Swainmote (*h*), and when judgment had been entered up a warrant was issued to the officers of the forest to apprehend the offenders (*i*).

SECT. 6.—*Judicial and other Officers of the Forests.*

The Justices in Eyre.

242. As the Chief Justice in Eyre was commonly a man of greater dignity than of knowledge in the laws of the forest, there were associated to him persons appointed by the King, who, together with the Chief Justice, were to determine all pleas of the forest,

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(*r*) "*Superoneratio forestæ* is when a commoner in the forest putteth on more beasts than he ought, and so surchargeth the forest" (4 Co. Inst. 293).

(*a*) 34 Edw. 1, Ordinatio de Foresta, c. 4.

(*b*) 4 Co. Inst. 289.

(*c*) Manwood, Treatise of the Forest Laws (1717), p. 344.

(*d*) Lewis on Forests and Forest Laws, pp. 39, 40; Manwood, Treatise of the Forest Laws (1717), pp. 57—79; 4 Co. Inst. 291.

(*e*) 57 Geo. 3, c. 61, s. 1.

(*f*) Crown Lands Act, 1829 (10 Geo. 4, c. 50), s. 95.

(*g*) *Ibid.* 291, 315.

(*h*) See Forest of Waltham. Presentments etc. at Forest Courts respecting Assarts Purprestures and unauthorised inclosures recorded before 1713; and Miscellaneous Presentments of Forest Courts recorded before 1713, published by order of the Epping Forest Commissioners.

(*i*) 1 Edw. 3, stat. 2, c. 2, Assiza de Foresta.

with a patent of *si non omnes* and a writ *de admittendo*. The Chief Justice and these associates were called *capitales justiciarii forestal.* A similar course apparently would have to be followed in case the First Commissioner of Woods should hold a court of justice-seat (*k*).

There was also a steward of the swainmote (*l*).

Verderers.

243. Verderers (*viridarii*) (*m*) are judicial officers of the forest chosen in full county by the King's writ. Their office is to observe and keep the laws of the forest, and to view, receive, and enrol all attachments and presentments of trespasses as to vert and venison, and to do equal right and justice to rich and poor. There are usually four verderers in each of the King's forests (*n*).

Regarders.

244. Regarders are good and lawful men chosen by virtue of the King's writ and elected by the freeholders and sworn in by the sheriff (*o*). Their duties are to look after the woods and timber in the King's forest, to view and make strict inquiry in every bailiwick of the forest as to offences relating to vert and venison, to cause all forfeitures to be enrolled and to inquire of all wastes, purprestures, and assarts (*p*) of the forest, and to make a "regard" or perambulation of the forest before the holding of a court of judgment-seat (*q*). There should be twelve regarders in a forest.

Rangers.

245. The ranger is an officer only appointed in the case of forests having known and acknowledged purlieus (*r*). His duties are confined to the purlieu, and consist in returning back into the forest deer coming thence, and inquiring into offences committed in the purlieu (*s*).

Agisters.

The agister's (*t*) duties are to collect the dues for cattle etc. pasturing in the forest, and to account to the judge at the next justice seat. He is also to prevent trespasses being done by the cattle in the forest. Four agisters should be appointed in each forest (*a*).

Foresters.

The forester's duties were to preserve the vert and venison, to watch them, to attack offenders or trespassers in the forest, and to present all manner of offences in the forest at the next court of attachment or swainmote (*b*).

Woodwards.

The woodward's duties were to look after the woods, and to be present at all the courts of attachment and other courts of the forest (*c*).

(*k*) 4 Co. Inst. 315.
(*l*) See p. 113, *ante.*
(*m*) *Viridarius à viridi*, vert.
(*n*) 4 Co. Inst. 292.
(*o*) Manwood, Treatise of the Forest Laws (1717), p. 319, where the form of oath is given.
(*p*) "Grubbing up, or felling woods and converting the soil where they did grow into tillage" (Manwood, Treatise of the Forest Laws, p. 19).
(*q*) Manwood, Treatise of the Forest Laws (1717), pp. 317, 321 etc ; as to the court of regard, see p. 112, *ante.*
(*r*) See title CONSTITUTIONAL LAW, Vol. VII., p. 184.
(*s*) 4 Co. Inst. 304.
(*t*) From *gyser*, to lie down (4 Co. Inst. 293).
(*a*) 4 Co. Inst. 293.
(*b*) Manwood, Treatise of the Forest Laws (1717), pp. 162—167.
(*c*) *Ibid.*, pp. 389—392.

PART XII. Court of Chivalry.

Part XII.—Court of Chivalry.

Court of Chivalry.

246. The Court of Chivalry (*d*) takes cognisance of questions relating to the right to use armorial ensigns and bearings (*e*). An appeal lies to the King from the decisions of the Court of Chivalry in case of arms (*f*). In 1695 an attempt was made by the Court of Chivalry to prevent an undertaker painting unauthorised arms on coaches and palls, but prohibition went against this as not being *causa armarum* (*g*). The court fell into disuse, but in 1732 an attempt was made to revive it, and a court was held in the Painted Chamber, Westminster, on the 3rd and 30th of March, at which complaints were exhibited against various persons for using divers ensigns of honour contrary to the law of arms, but the court adjourned without deciding any case, and has never since been

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(*d*) The Court of Chivalry was originally a court, held before the Lord High Constable of England and the Earl Marshal jointly, which had a civil jurisdiction relating to redressing injuries of honour and encroachment on armorial ensigns, precedency and distinctions of families, and a criminal jurisdiction over persons in military service, especially in foreign parts in time of war. The criminal jurisdiction practically ceased on the attainder of Edward Stafford, Duke of Buckingham in 1521, when the office of Lord High Constable was forfeited to the Crown, and the remaining jurisdiction of the Lord High Constable, namely, that of presiding at a wager of battel, was exercised by a constable appointed *pro hâc vice*. This was a separate jurisdiction of the Lord High Constable, independent of the Court of Chivalry. The last appointment for this purpose was in 1631 for the trial of the appeal of high treason by *Donald, Lord Rea* v. *Ramsay* (1631) (3 State Tr. 483), but the letters patent were revoked before the battel (by 59 Geo. 3, c. 46). This jurisdiction also ceased on the abolition of appeal of murder and wager of battel in 1819. After there ceased to be a Lord High Constable the Court of Chivalry was held before the Earl Marshal alone. The Court of Chivalry in early times attempted to draw to itself pleas concerning the common law, but in 1384 (8 Ric. 2, c. 5) and again in 1389 (13 Ric. 2, c. 2) statutes were passed to prevent this abuse.

This court is called *curia militaris* (Rot. Pat. Hen. 4), and the Marshal Court (Rot. Parl. 2 Hen. 6, note 9 ; 4 Co. Inst. 123).

Comes stabuli, count or officer of the stable (New English Dictionary, Vol. II., 871). "To the constable it appertaineth to have conusance of contracts and deeds of arms, and of war out of the realm, and also of things that touch war within the realm which cannot be determined or discussed by the common law" (4 Co. Inst. 123). The only remaining exercises of the office of Lord High Constable are the ceremonial functions at a coronation, on which occasion an appointment is made *pro hâc vice*.

"Marshal," from the old Teutonic *marhos*, a horse, and *skalkoz*, a servant (New English Dictionary, Vol. VI., p. 186), originally meant a farrier, but came in time to signify one of the chief functionaries of a royal household or court. In 1189 the office was held by the Earl of Pembroke, and since then it has never been held by any under the dignity of an earl. Thus the former title of Marshal of England became altered to that of Earl Marshal. The office is hereditary. The only remaining functions, except the ceremonial ones on the occasion of a coronation, are the jurisdiction in the Court of Chivalry and the superintendence of the College of Arms, with the power to grant armorial bearings on behalf of the Crown.

(*e*) Notably in the case of *Scroop* v. *Grosvenor* (1388), Rot. Let. Claus. 12 Ric. 2, memb. 4, and a special roll (14 Ric. 2) entitled "Rot. Process in curia militari in causa armorum int' Ric'um le Scroop, chevalier, et Robertum Grovenor, chevalier."

(*f*) 4 Co. Inst. 125.

(*g*) *Oldis* v. *Donmille* (1695), Show. Parl. Cas. 58.

held (*h*), although no statute has ever abolished or interfered with its authority. The three kings-at-arms (*i*) and the six heralds (*k*) are attendants upon this court (*l*).

Part XIII.—Court of Claims.

SECT. 1.—*Constitution and Jurisdiction.*

Court of Claims.

247. On the occasion of a coronation the Sovereign issues a commission to certain high officers of state, peers, and judges to hear petitions and claims relating to services to be done and performed at the coronation in respect of the tenure of manors, lands, and hereditaments (*m*) held by the tenure of grand sergeantry (*n*). Claims in respect of services connected with the parts of the ceremonial performed in Westminster Hall and with the procession are excluded from the consideration of the commission when those ceremonials are omitted at the coronation (*o*).

The court has power to decide on these claims, subject to the pleasure of the Sovereign, who may withdraw a claim from the commission, and transfer it to some other tribunal (*p*). The court may, however, refer any claim to the Sovereign's pleasure (*q*).

SECT. 2.—*Procedure and Officers.*

Procedure.

248. In 1901 sixty years had elapsed since the last Court of Claims had been held, and very little evidence was forthcoming as to the procedure. The court, however, proceeded to issue a notification (1) that petitioners need not appear in person if not summoned; (2) that petitioners might appear by counsel, solicitors, or agents; and (3) that, where there was no counterclaim, evidence that the petitioner represented a person whose claim was admitted on the last occasion was sufficient. As to evidence, the strict rules of evidence were relaxed so far that the court did not inquire too strictly into whether documentary evidence was produced from

(*h*) Noble, History of the College of Arms, pp. 373—375.

(*i*) Garter, Clarenceux, and Norroy.

(*k*) Chester, Lancaster, Somerset, Richmond, Windsor, York.

(*l*) 4 Co. Inst. 125. See also title PEERAGES AND OTHER DIGNITIES.

(*m*) The first Court of Claims of which a record exists was held on the occasion of the coronation of Richard II., in 1377, when John, King of Castile and Leon and Duke of Lancaster, presided as Lord High Steward. The *processus factus* of this court is on the Close Roll of 1 Ric. 2, memb. 45; and is printed in Legg's English Coronation Records, p. 131. See title CONSTITUTIONAL LAW, Vol. VI., p. 329.

(*n*) See Littleton, Tenures, s. 153: "He which holdeth by grand sergeantry ought to do some special service to the King."

(*o*) See proclamation of 26th June, 1901, *London Gazette*, 28th June, 1901, p. 4329.

(*p*) As, for instance, in 1901, the opposing claims to the office of the Lord Great Chamberlain were transferred to the Committee of Privileges of the House of Lords.

(*q*) As in the case of the claim of the Earl of Huntingdon in 1838 to carry one of the swords.

SECT. 2. Procedure and Officers.

the proper custody. Petitioners had to give notice whether they appeared in person or by counsel or agent (*r*).

The Clerk of the Crown and the registrar of the Privy Council acted as the clerks of the court.

Part XIV.—Courts held by the Sheriff.

SECT. 1.—*In General.*

Jurisdiction of the sheriff.

249. The jurisdiction of the sheriff in ancient times was both civil and criminal, and was exercised respectively in the sheriff's county court and the sheriff's tourn. The latter of these, which was a court of record, has been abolished (*s*); while the former, which is not a court of record, need only be held for the purpose of an election, or for the due execution of some writ, or for some other specific purpose (*t*). The sheriff at one time had also power to hold pleas of the Crown and to take inquests whereby persons might be indicted, but this jurisdiction has been abolished (*a*).

SECT. 2.—*Inquisitions on Writs of Elegit.*

Elegit.

250. By the Statute of Westminster II. (*b*) a judgment creditor is entitled, instead of having a writ of *fi. fa.*, to have a writ directing the sheriff to deliver to him all the chattels (*c*) of the defendant (saving only his oxen and beasts of the plough) and the one half of his land until the payment of the sum due under the judgment. The whole of the defendant's land is now liable to be delivered (*d*).

Inquisition.

251. The execution of a writ of *elegit* necessitates an inquisition on receipt of the writ. The sheriff proceeds at once to summon a jury of twelve to inquire as to what lands the judgment debtor holds in the county and what is their value. The jury are charged and sworn to well and truly try of what lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, the judgment debtor, or anyone in trust for him, is seised or over which he has a disposing power for his own benefit. The proceedings are *ex parte*, and it is not necessary

(*r*) See Wollaston's Coronation Claims.

(*s*) Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 18 (4). By s. 40 (1) every court leet, court baron, law day, view of frankpledge, or other like court held at the passing of the Act (16th September, 1887), shall continue to be held on the accustomed days and places. "The tourn is a court of record holden before the sherif, the ancient institution whereof was before Magna Carta, to hear and determine all felonies (death of man excepted) and common nuisances" (4 Co. Inst. 260). See, generally, title SHERIFFS AND BAILIFFS.

(*t*) Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 18 (1), (2). The sheriff's county court had not jurisdiction in actions of debt or damage wherein more than 40*s.* was claimed, nor in actions of trespass *vi et armis* (4 Co. Inst. 266). The sheriff's county court was in use until 1846, when the establishment of the statutory county courts caused it to fall into disuse.

(*a*) Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 18 (3). See, however, stat. (1354) 28 Edw. 3, c. 9, repealed by the Act of 1887.

(*b*) Stat. (1285) 13 Edw. 1, c. 18.

(*c*) Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 146.

(*d*) Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 11.

to give notice of them to the judgment debtor (*e*). As the inquisition is not conclusive against the judgment debtor, it is sufficient to give *primâ facie* evidence of the title. The finding of the jury, whether in favour of the creditor or of the debtor, may be set aside by the court (*f*), and the sheriff may be directed to take a new inquisition (*g*). The sheriff or under-sheriff presides at the inquisition. The writ and inquisition must be returned and filed in the court from which the writ issued (*h*).

SECT. 3.—*Inquiries as to Damages.*

Inquiries as to damages.

252. When in an action for unliquidated damages or for detention of goods, the plaintiff signs interlocutory judgment (*i*), in default of appearance, or of pleading, if the court or a judge does not order some other mode of ascertaining the damages or the value of the goods detained (*k*), the plaintiff can take out a writ of inquiry directed to the sheriff requiring him to summon a jury of twelve men (*l*) to assess the damages. In counties the jurymen are summoned from the ordinary jury book, and in cities and boroughs in the manner accustomed before 1825, that is, from the lists of burgesses (*m*). A special jury can only be had by order of the court from which the writ issues (*n*). It seems that there is no right to challenge jurymen (*o*). Ten days' notice of the time and place of the inquiry must be given to the defendant (*p*). The plaintiff is entitled to appear by his solicitor and by counsel, but notice of an intention to appear by counsel must be given to the defendant (*q*). The under-sheriff usually presides, but the sheriff may appoint a deputy for the purpose by a written authority under his seal of office (*r*). The proceedings at the inquisition are regulated by the Rules of the Supreme Court (*s*).

The defendant is only entitled to plead in mitigation of damages, and may not, under colour of seeking to reduce the damages, set up allegations which would be a defence or a bar to the action (*t*).

(*e*) *Steed* v. *Layner* (1725), 2 Ld. Raym. 1382.

(*f*) *Putten* v. *Purbeck* (1700), 2 Salk. 563; *Barnes* v. *Harding* (1857), 1 C. B. (N. S.) 568; *Doe* d. *Evans* v. *Owen* (1831), 2 Cr. & J. 71; *Fenny* v. *Durrant* (1817), 1 B. & Ald. 40, 41.

(*g*) *Barnes* v. *Harding*, *supra*.

(*h*) 3 Bac. Abr. Execution, C, 2; Co. Litt. 289 b; *Johns* v. *Pink*, [1900] 1 Ch. 296.

(*i*) That is, a judgment that the plaintiff is entitled to recover, but leaving the *quantum* to be ascertained; see R. S. C., Ord. 13, r. 5.

(*k*) R. S. C., Ord. 13, r. 6.

(*l*) See Juries Act, 1825 (6 Geo. 4, c. 50), s. 52.

(*m*) *Ibid.*, s. 50.

(*n*) *Price* v. *Williams* (1836), 5 Dowl. 160.

(*o*) Mather, Sheriff and Execution Law, p. 409 (2nd ed., 1903, p. 506).

(*p*) R. S. C., Ord. 36, rr. 14, 56. See *Beetknife* v. *Packington* (*Sir H.*) (1729), 1 Barn. (K. B.) 233; *Williams* v. *Frith* (1779), 1 Doug. (K. B.) 198.

(*q*) See *Elliott* v. *Nicklin* (1818), 5 Price, 641.

(*r*) In the City of London the secondary is the deputy to hold the inquiry.

(*s*) R. S. C., Ord. 36, rr. 34—37, 56. Where the ascertainment of the damages is a matter of calculation, the court or a judge may direct them to be ascertained by an officer of the court instead of by means of a writ of inquiry (R. S. C., Ord. 36, rr. 57, 57A). See Yearly Supreme Court Practice, 1909, p. 103.

(*t*) *Speck* v. *Phillips* (1839), 5 M. & W. 279.

SECT. 3. Inquiries as to Damages.

The finding of the jury can be set aside on the ground of misdirection (*a*) or of being contrary to the weight of evidence (*b*). The application for a new trial must be made to the Court of Appeal, and not to a divisional court (*c*).

If the sheriff does not make a return in due time, he will be compelled to do so by a rule (*d*). The sheriff may return that he and the jury are in doubt and pray the advice of the court (*e*). If the sheriff return that the jury found no damages, he is not responsible for the default of the jury (*f*).

SECT. 4.—*Court to assess Compensation under the Lands Clauses Act*, 1845.

Compensation courts.

253. Where lands over the value of £50 are compulsorily taken or injuriously affected under the Lands Clauses Act, 1845 (*g*), if the owner of the lands taken does not require arbitration, the compensation payable to such owner is to be ascertained by a jury presided over by the sheriff (*h*).

Part XV.—Palatine Courts.

SECT. 1.—*Court of the Duchy Chamber of Lancaster.*

Court of Duchy Chamber.

254. This court, which is not a court of record, may be held before the Chancellor of the Duchy of Lancaster or his deputy. It had jurisdiction concerning equities relating to lands holden of the King in right of the Duchy of Lancaster (*i*), whether situated within the county palatine of Lancaster or not. This jurisdiction was not exclusive (*k*). The proceedings were conducted as on the equity side in the old Courts of Exchequer and Chancery (*l*). This court has never been abolished, but has not sat for a long period (*m*).

SECT. 2.—*Chancery Court of the County Palatine of Lancaster.*

SUB-SECT. 1.—*Constitution.*

Lancaster Court of Chancery.

255. By a charter of Edward III. dated the 6th March, 1351 (*n*), there was granted for his life to Henry, Duke of Lancaster (*inter*

(*a*) *Gainsford* v. *Carroll* (1824), 2 B. & C. 624.
(*b*) *Kingston* v. *Haychurch* (1819), 1 Chit. 644.
(*c*) *William Radam's Microbe Killer Co., Ltd.* v. *Leather*, [1892] 1 Q. B. 85, C. A.
(*d*) *Stockdale* v. *Hansard* (1840), 8 Dowl. 297.
(*e*) Dalton, Office of Sheriff, 260.
(*f*) *Pettifer's Case* (1603), 5 Co. Rep. 32 a, 32 b.
(*g*) 8 & 9 Vict. c. 18.
(*h*) *Ibid.* See title COMPULSORY PURCHASE OF LAND AND COMPENSATION, Vol. VI., p. 86.
(*i*) *Owen* v. *Holt* (1615), Hob. 77; *Fisher* v. *Patten* (1671), 2 Lev. 24; *Case of the Duchy of Lancaster* (1561), 1 Plowd. 212. See also title CONSTITUTIONAL LAW, Vol. VII., p. 217.
(*k*) *Levington* v. *Woton* (1631), 1 Rep. Ch. [*52]; *Fleetwood* v. *Pool* (1660), Hard. 171. See also cases in Tothill under title "Duchy."
(*l*) 4 Co. Inst. 206.
(*m*) The last pleading on the file is in *Ord* v. *Wood*, March 13th, 1835.
(*n*) Hardy, Charters of the Duchy of Lancaster, p. 9.

alia), a court of chancery, a chancellor (*o*), and such other *jura regalia* (*p*) in the county of Lancaster as pertained to a count palatine. On the 28th February, 1377 (*a*), a similar charter was granted for the term of his life to John, King of Castile and Leon, Duke of Lancaster. On 16th February, 1390 (*b*), Richard II. by charter granted these *jura regalia* to the Duke of Lancaster and his heirs male. Henry IV. on his accession by a charter of the 14th October, 1399 (*c*), declared that these *jura regalia* were not to be changed by the King's accession and severed the Duchy from the Crown, the reason being that he had the Duchy by a sure and indefeasible title, but specially because his title to the Crown was not so assured, as the right to the Crown was in the heir of Lionel, Duke of Clarence, second son of Edward III. (*d*). Since that time the county palatine of Lancaster has remained in the possession of the Sovereign as an inheritance separate from the Crown.

The county palatine of Lancaster under these charters has a court called the Court of Chancery of Lancaster, which is now regulated by a number of statutes, also an Attorney-General of the County Palatine and Duchy of Lancaster (*e*).

SUB-SECT. 2.—*Jurisdiction and Appeals.*

Jurisdiction.

256. The Court of Chancery of Lancaster has within the county palatine the like powers and jurisdiction as the High Court of Justice in its Chancery Division (*f*). The jurisdiction is thus unlimited in amount, although limited in area. The jurisdiction is concurrent with that of the High Court of Justice (*g*), and depends upon the existence within the jurisdiction of the persons, though not of the property, in question (*h*). If, however, any action is

(*o*) The first Chancellor of the Duchy was Sir Henry de Haydock, 1532, and the first Chancellor of the County Palatine was Thomas de Thelwall, appointed the 16th April, 1377 (Baines, History of Lancashire, Vol. I., p. 182).

(*p*) Until 1873 the County Palatine had also its own Court of Common Pleas, and special commissions of assize were issued in regard thereof (Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 99). The appointment of justices of the peace is not affected by this section, and they are still appointed by the Chancellor of the Duchy.

(*a*) Hardy, Charters of the Duchy of Lancaster, p. 32.

(*b*) *Ibid.*, p. 65.

(*c*) *Ibid.*, p. 102.

(*d*) 4 Co. Inst. 205.

(*e*) Court of Chancery of Lancaster Act, 1850 (13 & 14 Vict. c. 43); Court of Chancery of Lancaster Act, 1854 (17 & 18 Vict. c. 82); Chancery of Lancaster Act, 1890 (53 & 54 Vict. c. 23); Chancery Amendment Act, 1858 (21 & 22 Vict. c. 27); Chancery Regulation Act, 1862 (25 & 26 Vict. c. 42). Both these latter Acts were repealed by the Statute Law Revision and Civil Procedure Act, 1883 (46 & 47 Vict. c. 49), with the proviso that they are to be construed as if contained in a local and personal Act relating to the Court of Chancery of Lancaster.

(*f*) Chancery of Lancaster Act, 1890 (53 & 54 Vict. c. 23), s. 3.

(*g*) *Wynne* v. *Hughes* (1859), 26 Beav. 377; *Re Yates, Bradley* v. *Stelfox* (1862), 3 De G. J. & Sm. 402; *Re Alison's Trusts and Re Johnson* (*Infants*) (1878), 8 Ch. D. 1, 9, C. A. See also the report in 26 W. R. 450, *per* JESSEL, M.R., at p. 453: "It must be remembered that the Palatine Court and the High Court are co-ordinate jurisdictions."

(*h*) *Re Longdendale Cotton Spinning Co.* (1878), 8 Ch. D. 150. See also

SECT. 2. Chancery Court of the County Palatine of Lancaster.

commenced in the palatine court which is not within the ancient chancery jurisdiction of the court (*i*), and would not if commenced in the High Court be assigned to the Chancery Division, it may be transferred to the High Court by the Chancery Court of Lancaster or the Court of Appeal (*k*).

This court also possesses the summary jurisdiction of the Chancery Division (*l*), the statutory jurisdiction as to the property of infants and other persons under disability, power to administer assets (*m*), as well as jurisdiction under the Conveyancing Act, 1881 (*n*), the Trustee Act, 1893 (*o*), and the Judicial Trustee Act, 1896 (*p*), and as to money paid into court (*q*) under the Lands Clauses Act, 1845 (*r*).

Juries.

257. The court has power to direct that any question of fact arising in a suit or proceeding be tried by a special or common jury before the court itself (*s*), or to direct an issue to try any question of fact by a jury at the assizes (*a*).

Patents.

258. The Chancery Court of Lancaster is not a court, nor is the Vice-Chancellor a judge, within the meaning of the Patents and Designs Act, 1907 (*b*); the Vice-Chancellor has not power to grant a certificate that the validity of a patent came into question in an action for infringement so as to entitle the patentee to solicitor and client costs in a subsequent action for infringement unless the court otherwise directs (*c*).

Appeal.

259. An appeal lies from this court to the Court of Appeal (*d*), and thence to the House of Lords (*e*).

Dunmore v. *Wharam* (1898), 67 L. J. (CH.) 221; *Re State Banking Corporation, Ltd.* (1907), 51 Sol. Jo. 265.

(*i*) S. 23 of the Court of Chancery of Lancaster Act, 1850 (13 & 14 Vict. c. 43), abolished the jurisdiction of the Palatine Court over persons of unsound mind.

(*k*) Chancery of Lancaster Act, 1890 (53 & 54 Vict. c. 23), s. 5.

(*l*) Court of Chancery of Lancaster Act, 1850 (13 & 14 Vict. c. 43), s. 11.

(*m*) Court of Chancery of Lancaster Act, 1854 (17 & 18 Vict. c. 82), s. 12.

(*n*) 44 & 45 Vict. c. 41, s. 69 (9).

(*o*) 56 & 57 Vict. c. 53, s. 46.

(*p*) 59 & 60 Vict. c. 35, s. 2.

(*q*) Court of Chancery of Lancaster Act, 1850 (13 & 14 Vict. c. 43), s. 12.

(*r*) 8 & 9 Vict. c. 18.

(*s*) Chancery Amendment Act, 1858 (21 & 22 Vict. c. 27), s. 3; *Yates* v. *Kyffin-Taylor and Wark*, [1899] W. N. 141.

(*a*) Chancery Regulation Act, 1862 (25 & 26 Vict. c. 42), s. 2; *Yates* v. *Kyffin-Taylor and Wark*, *supra*.

(*b*) 7 Edw. 7, c. 29.

(*c*) *Ibid.*, s. 35; see *Proctor* v. *Sutton Lodge Chemical Co.* (1888), 5 R. P. C. 184.

(*d*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 18 (2). By the Court of Chancery of Lancaster Act, 1854 (17 & 18 Vict. c. 82), s. 1, the Chancellor of the Duchy and the two Lords Justices of Appeal were constituted the Court of Appeal in Chancery of the County Palatine, with an appeal thence to the House of Lords (*ibid.*, s. 3). The Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 18, transferred this jurisdiction to the Court of Appeal (see p. 62, *ante*), and the sections of the Act of 1854 were repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59).

(*e*) Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 3. As to appeals, see *Lee* v. *Nuttall* (1879), 12 Ch. D. 61, C. A.; *Kershaw* v. *Vickers* (1868), 3 Ch. App. 513.

SUB-SECT. 3.—*Judges.*

SECT. 2. Chancery Court of the County Palatine of Lancaster.

The Vice-Chancellor

260. The Chancellor of the Duchy and County Palatine formerly exercised judicial functions. The appointment now, however, is of a political nature, and carries with it as a rule a seat in the Cabinet. The Vice-Chancellor, with the exception of certain interlocutory matters (*f*), performs all the judicial functions. He is appointed on the nomination of the Chancellor of the Duchy by letters patent from the Crown, which are expressed to be during pleasure, but in point of fact are *quam diu se bene gesserit.* Whenever the office of Chancellor of the Duchy and County Palatine of Lancaster becomes vacant, the Vice-Chancellor continues in office subject to the powers of the succeeding Chancellor (*g*).

SUB-SECT. 4.—*Procedure.*

Rules.

261. The Chancellor of the Duchy and County Palatine has statutory powers (*h*) to make rules of procedure subject to the approval of the authority for the time being empowered to make rules for the Supreme Court. Under these powers rules of procedure have been made (*i*) which assimilate the procedure of the Palatine Court to that of the High Court of Justice. Rules have also been made under the Settled Estates Act, 1877 (*k*), the Settled Land Act, 1882 (*l*), and under the Trustee Act, 1893 (*m*). There are also rules dealing with court fees (*n*), solicitors' costs (*o*), suitors' fund and fee fund accounts (*p*). The Chancellor of the Duchy has power to make rules regulating proceedings under the Conveyancing and Law of Property Act, 1881 (*q*).

Party out of jurisdiction.

In cases where any of the parties are out of the jurisdiction of

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(*f*) The Chancery of Lancaster Rules, Ord. 48.

(*g*) Chancery of Lancaster Act, 1890 (53 & 54 Vict. c. 23), s. 7.

(*h*) Court of Chancery of Lancaster Act, 1850 (13 & 14 Vict. c. 43), ss. 1—4; Chancery of Lancaster Act, 1890 (53 & 54 Vict. c. 23), s. 6.

(*i*) The Chancery of Lancaster Rules, 1884, which were amended by the Chancery of Lancaster Rules, 1887, by a general order and rule dated 19th December, 1893, and by the Chancery of Lancaster Rules, 1894. These rules are printed as now in force in Statutory Rules and Orders Revised, Vol. VI., Lancaster, pp. 23, 223; Snow and Winstanley, Chancery Court of Lancaster, p. 42.

(*k*) 40 & 41 Vict. c. 18 (Settled Estates Act, Chancery of Lancaster Orders, 1880; Statutory Rules and Orders Revised, Vol. VI., Lancaster, p. 1; Snow and Winstanley, p. 205).

(*l*) 45 & 46 Vict. c. 38 (Settled Land Act, Chancery of Lancaster Rules, 1883; Statutory Rules and Orders Revised, Vol. VI., Lancaster, p. 12; Snow and Winstanley, p. 212).

(*m*) 56 & 57 Vict. c. 53 (Rules under Trustee Act, 1893; Statutory Rules and Orders Revised, Vol. VI., Lancaster, p. 258).

(*n*) See Statutory Rules and Orders Revised, Vol. VI., Lancaster, pp. 223, 243, 257; Snow and Winstanley, pp. 218, 244.

(*o*) See Statutory Rules and Orders Revised, Vol. VI., Lancaster, pp. 232, 243; Snow and Winstanley, pp. 229, 244. As to costs and court fees see Orders of 27th and 28th November, 1884, and *Re Manchester Real Ice Skating and Supply Co.*, [1900] 1 Ch. 573, C. A.

(*p*) See Statutory Rules and Orders Revised, Vol. VI., Lancaster, pp. 244, 255; Snow and Winstanley, p. 246; Statutory Rules and Orders, 1908; Addenda, pp. 1009, 1010.

(*q*) 44 & 45 Vict. c. 41, s. 69 (9).

SECT. 2. Chancery Court of the County Palatine of Lancaster.

the court the Court of Appeal may either direct the cause to be transferred to the High Court or service to be effected out of the jurisdiction (*r*). Where a decree or order of the court cannot be enforced because the party to be bound thereby is out of the jurisdiction, it can be enforced by making it an order of the High Court (*s*).

The Vice-Chancellor has power to hear interlocutory matters out of the jurisdiction (*a*), but he can only hear causes out of the jurisdiction by consent (*b*).

SUB-SECT. 5.—*Officers.*

Officers.

262. There is an Attorney-General of the County Palatine and Duchy of Lancaster. There are three district registrars of the Liverpool, Manchester, and Preston districts respectively, with one assistant registrar at Liverpool and two at Manchester. The registrars are appointed by the Chancellor of the Duchy and County Palatine, and hold office during his pleasure. The registrars in the Palatine Court perform the duties which the Masters of the Supreme Court (Chancery Division and Taxing Office), the Chancery Registrars, and the clerks in the Central Office perform in the High Court (*c*).

There is also a comptroller, who is appointed by the Chancellor. His duties are to check receipts and payments of suitors' moneys.

The other officers are a seal-keeper and a cursitor (*d*).

SECT. 3.—*Chancery Court of the County Palatine of Durham.*

SUB-SECT. 1.—*Constitution.*

Durham Chancery Court.

263. Even before the Norman Conquest the bishops of Durham appear to have claimed palatinate or *quasi*-palatinate rights and jurisdiction. This prescriptive franchise was confirmed by charters of William the Conqueror, William Rufus, Henry I., and Henry II. (*e*). In the reign of Edward I. Anthony Bek, the then Bishop, was summoned to appear before the King's Justices under the Statute of "Quo Warranto" (*f*) to show how he held his franchise, and on his refusal to appear his franchise was seized into the King's hands in the name of distress. The Bishop appealed to the King and his council in Parliament, who held that he was entitled

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(*r*) Court of Chancery of Lancaster Act, 1854 (17 & 18 Vict. c. 82), s. 8. See *Re Watmough, Sergenson* v. *Beloe* (1883), 24 Ch. D. 280, C. A.; *Cooke* v. *Smith* (1890), 44 Ch. D. 72, C. A.; *Waltham* v. *Goodier* (1855) 3 W. R. 352; *Walker* v. *Dodds* (1887), 37 Ch. D. 188, C. A.

(*s*) Court of Chancery of Lancaster Act, 1850 (13 & 14 Vict. c. 43), s. 15.

(*a*) *Ibid.*, s. 13.

(*b*) Chancery of Lancaster Rules, Ord. 33, rr. 1, 2.

(*c*) *Ibid.*, Ord. 48.

(*d*) Cursitors (*clerici de cursu*) were clerks of the Court of Chancery who made out original writs; see title ACTION, Vol. I., p. 32.

(*e*) 4 Co. Inst. 216. See also Bishop William de St. Carileph's charter to convent of Durham (1082); Registrum Palatinum Dunelmense, Vol. I., pp. lxvi.—lxviii. See also Williamson, Palatine Court of Durham Act, 1889, pp. 3—14.

(*f*) 18 Edw. 1, Statute "De quo Warranto" (1289—1290).

to *jura regalia* between Tyne and Tees, and in Norhamshire and Bedlington. In 1836 the *jura regalia* of the Bishop of Durham were transferred to the Crown (*g*). The only one now surviving is the Court of Chancery of the County Palatine of Durham, the exercise of the jurisdiction being now assimilated to that of the High Court of Justice (*h*).

SUB-SECT. 2.—*Jurisdiction.*

Jurisdiction.

264. The jurisdiction of the court is unlimited in amount, but limited in area to the county palatine, which certainly includes the whole of the present county of Durham, and possibly other districts (*i*). The jurisdiction apart from statute is the old jurisdiction of the High Court of Chancery within the county palatine. This is a jurisdiction *in personam* over the person within the area of jurisdiction, extending, in effect, to property wherever situate (*k*), but enforceable only, apart from statute, against the person, and not the property. This jurisdiction has been supplemented by statutes enabling orders of the Palatine Court to be enforced by making them orders of the High Court of Justice (*l*), empowering the court to deal with the property of infants and other persons under disability, the administration of assets (*m*), giving to it the summary

(*g*) Durham (County Palatine) Act, 1836 (6 & 7 Will. 4, c. 19). The jurisdiction of the Chancery Court and the Court of Pleas was not altered by this Act. The jurisdiction of the Court of Pleas was transferred to the High Court by the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16. See p. 52, *ante*, and title CONSTITUTIONAL LAW, Vol. VII., p. 216.

(*h*) Palatine Court of Durham Act, 1889 (52 & 53 Vict. c. 47).

(*i*) Durham (County Palatine) Act, 1836 (6 & 7 Will. 4, c. 19), defines "county of Durham" as "including the detached parts of Craikshire, Bedlingtonshire, Norhamshire, Allertonshire, and Islandshire, and all other places heretofore within the jurisdiction of the Bishop of Durham, in right of the said county palatine." It has never been decided what the effect upon this is of the enactment of the Counties (Detached Parts) Act, 1844 (7 & 8 Vict. c. 61), annexing detached parts of counties to the county of which it forms part for the purposes of parliamentary elections. It is, however, suggested that an Act of this nature would not effect the *jura regalia* without express enactment. The Palatine Court of Durham Act, 1889 (52 & 53 Vict. c. 47), does not define the area over which the court has jurisdiction.

(*k*) *Re Longdendale Cotton Spinning Co.* (1878), 8 Ch. D. 150.

(*l*) Palatine Court of Durham Act, 1889 (52 & 53 Vict. c. 47), s. 3.

(*m*) *Ibid.*, s. 6. The powers conferred on the court by this enactment are under the following statutes:—Real property of infants: Debts Recovery Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 47), s. 11; Infants' Property Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 65), ss. 16, 17; Debts Recovery Act, 1839 (2 & 3 Vict. c. 60); Land Drainage Act, 1845 (8 & 9 Vict. c. 56), ss. 3—5; Partition Act, 1868 (31 & 32 Vict. c. 40), s. 3 (see, however, Partition Act, 1876 (39 & 40 Vict. c. 17), s. 6); Settled Estates Act, 1877 (40 & 41 Vict. c. 18), ss. 4, 10, 49; Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), ss. 41, 42; Settled Land Act, 1882 (45 & 46 Vict. c. 38), ss. 59, 60. Personal property of infants: Legacy Duty Act, 1796 (36 Geo. 3, c. 52), s. 32; Trustee Act, 1893 (56 & 57 Vict. c. 53), ss. 26, 28. Marriage settlements of infants: Infant Settlements Act, 1855 (18 & 19 Vict. c. 43). Maintenance of infants: Infants' Property Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 65), s. 32. Property of felons: Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 28. Investment of moneys of persons under disability: Copyhold Acts, 1841, 1843, 1852 (4 & 5 Vict. c. 35, s. 73; 6 & 7 Vict. c. 23, s. 14; 15 & 16 Vict. c. 51, ss. 22, 39), which are now repealed and contained in the Copyhold Act, 1894 (57 & 58 Vict. c. 46), see

SECT. 3. Chancery Court of the County Palatine of Durham.

jurisdiction of the High Court (*n*), and the High Court jurisdiction (*o*) under the Charitable Trusts Acts, 1853 to 1869 (*p*), and also the jurisdiction (*q*) under the Partition Acts, 1868 (*r*) and 1876 (*s*), the Settled Estates Act, 1877 (*t*), the Conveyancing Act, 1881 (*a*), and the Settled Land Acts, 1882 (*b*) and 1884 (*c*). There is also jurisdiction under the Trustee Act, 1893 (*d*), and the Judicial Trustee Act, 1896 (*e*). As in the case of the Chancery Court of Lancaster, the jurisdiction is concurrent with that of the High Court of Justice (*f*).

SUB-SECT. 3.—*Judges.*

The Chancellor.

265. The Chancellor of the County Palatine of Durham is the sole judge of the court.

He is appointed by warrant under the royal sign manual (*g*).

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title COPYHOLDS, Vol. VIII., p. 121; Defence Acts, 1842, 1860 (5 & 6 Vict. c. 94, s. 25; 23 & 24 Vict. c. 112, s. 20); Ecclesiastical Houses of Residence Act, 1842 (5 & 6 Vict. c. 26); Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 20, Schedule, r. 20; Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 69. Administration of assets: Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 34; Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 10; Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 125.

(*n*) Palatine Court of Durham Act, 1889 (52 & 53 Vict. c. 47), s. 7. The powers conferred on the court by this section are under the following statutes: Cestui que vie Act, 1707 (6 Ann. c. 72), s. 1; Law of Property Amendment Acts, 1859 and 1860 (22 & 23 Vict. c. 35; 23 & 24 Vict. c. 38); Marriage Act, 1823 (4 Geo. 4, c. 72), s. 17; Custody of Infants Act, 1873 (36 & 37 Vict. c. 12), s. 1; Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27); Companies Acts, 1862 and 1867 (25 & 26 Vict. c. 89; 30 & 31 Vict. c. 131), see now the Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), and title COMPANIES, Vol. V.; Mortgage Debenture Acts, 1865 and 1870 (28 & 29 Vict. c. 78; 33 & 34 Vict. c. 20); Railway Companies Act, 1867 (30 & 31 Vict. c. 127); Life Assurance Companies Acts, 1870–2 (33 & 34 Vict. c. 61; 34 & 35 Vict. c. 58; 35 & 36 Vict. c. 41); Lands Clauses Consolidation Acts, 1845 and 1860 (8 & 9 Vict. c. 18; 23 & 24 Vict. c. 106); Public Money Drainage Act, 1846 (9 & 10 Vict. c. 101); Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), s. 21; Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 48; Declaration of Title Act, 1862 (25 & 26 Vict. c. 67); Land Registry Act, 1862 (25 & 26 Vict. c. 53); Judgments Act, 1864 (27 & 28 Vict. c. 112); Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 9; Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 10, 17; Land Tax Redemption Act, 1802 (42 Geo. 3, c. 116); Local Loans Act, 1875 (38 & 39 Vict. c. 83); Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 45; Arbitration Act, 1889 (52 & 53 Vict. c. 49).

(*o*) Palatine Court of Durham Act, 1889 (52 & 53 Vict. c. 47), s. 9.

(*p*) 16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; 25 & 26 Vict. c. 112; 32 & 33 Vict. c. 110. The court has also inherent jurisdiction to control charitable trusts, but this jurisdiction is only exercisable by information in the name of the Attorney-General.

(*q*) Palatine Court of Durham Act, 1889 (52 & 53 Vict. c. 47), s. 10.

(*r*) 31 & 32 Vict. c. 40.

(*s*) 39 & 40 Vict. c. 17.

(*t*) 40 & 41 Vict. c. 18.

(*a*) 44 & 45 Vict. c. 41.

(*b*) 45 & 46 Vict. c. 38.

(*c*) 47 & 48 Vict. c. 18.

(*d*) 56 & 57 Vict. c. 53, s. 46.

(*e*) 59 & 60 Vict. c. 35, s. 2.

(*f*) See p. 52, *ante*.

(*g*) See *London Gazette*, 31st October, 1905, p. 7248.

SUB-SECT. 4.—*Procedure.*

SECT. 3. Chancery Court of the County Palatine of Durham.

Procedure.

266. The Chancellor has a prescriptive power to regulate the procedure of his court, and further, with the concurrence of the Lord Chancellor, power to adapt and modify the Rules of the Supreme Court to the Palatine Court (*h*).

The Chancellor has jurisdiction to hear interlocutory matters out of the jurisdiction (*i*).

In case of any person who has entered an appearance, or come in, or otherwise submitted to the jurisdiction of the court, the Chancellor may, upon special application, make an order for service of process on him out of the jurisdiction (*k*). The service of subpœnas on witnesses out of the jurisdiction is valid (*l*).

Rules.

267. The Chancery of Durham Rules, 1889, were made by the Chancellor on the 1st February, 1889, and were amended by rules made the 6th July, 1889. These rules are now in force. An order as to court fees and another as to solicitors' costs were also made by the Chancellor on the 1st February, 1889 (*m*).

Appeal.

268. There is an appeal from the Palatine Court to the Court of Appeal, and thence to the House of Lords (*n*).

SUB-SECT. 5.—*Officers.*

Officers.

269. There is an Attorney-General, a Solicitor-General, a conveyancing counsel, and a registrar of the court, who is appointed by the Chancellor and exercises the functions of a Master of the Supreme Court (Chancery Division (*o*) and Taxing Office) (*p*) and of a Chancery Registrar etc. He also has the custody of documents etc. (*q*). There is an appeal from the Registrar to the Chancellor (*r*).

Part XVI.—Courts of the Cinque Ports.

SECT. 1.—*In General.*

The Warden of the Cinque Ports.

270. Very little remains of the former jurisdiction of the Lord Warden of the Cinque Ports (*s*), whose civil juris-

(*h*) Palatine Court of Durham Act, 1889 (52 & 53 Vict. c. 47), s. 1.
(*i*) *Ibid.*, s. 4.
(*k*) *Ibid.*, s. 2.
(*l*) *Ibid.*, s. 5.
(*m*) These rules, which are adapted from the Rules of the Supreme Court, are printed and put on sale. They were made under the Chancellor's prescriptive power, and not under the powers conferred by s. 1 of the Act of 1889.
(*n*) Palatine Court of Durham Act, 1889 (52 & 53 Vict. c. 47), s. 11. The change that this enactment made in the appeal was to substitute an appeal in the first instance to the Court of Appeal for an appeal direct to the House of Lords.
(*o*) The Chancery of Durham Rules, 1889, Ord. 46.
(*p*) *Ibid.*, Ord. 50, r. 11.
(*q*) *Ibid.*, Preliminary Order.
(*r*) *Ibid.*, Ord. 46, r. 105.
(*s*) The privileged ports were originally three in number : Dover, Sandwich, and Romney. Hastings and Hythe were added by William the Conqueror, and

SECT. 1. In General.

diction (*t*) was abolished, except as to salvage, in 1855 (*a*). A commission for the punishment of offences may be issued (*b*), directed to the Lord Warden jointly with the admiral or admirals or his or their lieutenant, deputy or deputies (*c*). The Admiralty Court of the Cinque Ports (*d*) is also preserved (*e*).

Justices of the Cinque Ports.

271. Justices are appointed in the five ports and two ancient towns and such of their members as are boroughs, as in the case of other boroughs. The Crown has power to appoint justices having jurisdiction throughout the whole of the liberties of the Cinque Ports other than in the towns of Rye and Winchelsea and their corporate members, except for licensing purposes therein or matters which go before the general sessions of the Cinque Ports, ancient towns, or corporate members (*f*).

SECT. 2.—*Salvage Commissioners.*

Salvage Commissioners.

272. The Cinque Ports Salvage Commissioners consist of three or more persons from each of the Cinque Ports, two ancient towns, and their members appointed by the Lord Warden. They have jurisdiction to decide on all claims made by pilots, hovellers, boatmen, and others for services rendered to ships, for carrying anchors or stores to ships, or preserving goods or merchandise wrecked, within the jurisdiction of the Cinque Ports (*g*). An appeal lies either to the Cinque Ports Admiralty Court or to the Admiralty Division of the High Court (*h*).

The Lord Warden, the Lieutenant of Dover Castle, the deputy wardens of the Cinque Ports, and the judge of the Cinque Ports Admiralty Court have the same jurisdiction (*i*).

Winchelsea and Rye were also added before the first year of King John (1199). The Lord Warden or Keeper of the Cinque Ports (*guardianus quinque portuum*) is also the Constable of Dover Castle. He is also admiral, and is exempt from the jurisdiction of the High Court in the exercise of its Admiralty jurisdiction (4 Co. Inst. 223). The boundaries of the jurisdiction of the Lord Warden are from the point called Red Cliff, westward of Seaford, in the county of Sussex, along the coast to Faversham, thence across the water to Shellness Point, in the Isle of Sheppey, thence to Shee Bacon, thence in a direct line to Brightlingsea, thence along the shore to St. Ossyth, in Essex, thence along the shore to Maze Tower, and thence back to Red Cliff by way of an imaginary line in the sea (Cinque Ports Act, 1821 (1 & 2 Geo. 4, c. 76), s. 18).

(*t*) There was a court of chancery and a court of load manage for the regulation of pilots.

(*a*) Cinque Ports Act, 1855 (18 & 19 Vict. c. 48), ss. 2, 10.

(*b*) Offences at Sea Act, 1531 (28 Hen. 8, c. 15).

(*c*) Cinque Ports Act, 1821 (1 & 2 Geo. 4, c. 76), s. 16.

(*d*) See, as to this court, title ADMIRALTY, Vol. I., p. 139.

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 256. See also Municipal Corporations Act, 1883 (46 & 47 Vict. c. 18), s. 13, and Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 571.

(*f*) Cinque Ports Act, 1811 (51 Geo. 3, c. 36). For the territorial jurisdiction of the justices of the Cinque Ports, see the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 248.

(*g*) Cinque Ports Act, 1821 (1 & 2 Geo. 4, c. 76), ss. 1, 2; Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 571.

(*h*) *Ibid.*, s. 4. See *The Gloria de Maria* (1856), Sw. 106; *The Elise* (1859), Sw. 436.

(*i*) *Ibid.*, s. 15; and see title ADMIRALTY, Vol. I., p. 139.

SECT. 3.—*The Courts of Shepway, Brotherhood, and Guestling.*

SECT. 2. The Courts of Shepway, Brotherhood, and Guestling.

Court of Shepway.

273. The Court of Shepway (*k*) was the ancient court in which the pleas of the Cinque Ports were heard and determined before the Lord Warden. Its only remaining function is to be summoned on the occasion of the installation of a new Lord Warden, and to have the patent of appointment read to the members of the court, and to receive his undertaking to maintain the franchises, liberties, and usances of the Cinque Ports (*l*).

Courts of Brotherhood and Guestling.

274. The Courts of Brotherhood (*m*) and Guestling (*n*) are courts which take cognisance of matters affecting the Cinque Ports and ancient towns, and the Ports and ancient towns and their members respectively.

The Court of Brotherhood is first held, and then there is a general meeting of the Brotherhood and Guestling. In the Court of Brotherhood the mayor, two jurats, and two freemen from each port or town sit, with the addition in the Court of Guestling of a similar deputation from each corporate member. The presiding officer is entitled the Speaker, and the office goes by rotation through the five Ports and two ancient towns (*o*). These courts are now usually only held on the occasion of a coronation to select the barons of the Cinque Ports who are to attend and to claim all the privileges of the Cinque Ports before the Court of Claims (*p*).

Part XVII.—Borough and Local Courts of Record.

SECT. 1.—*In General.*

SUB-SECT. 1.—*Jurisdiction.*

Local courts.

275. Besides the county courts (*q*), a large number of local courts of record have been established either by royal charter, or by local and personal Acts of Parliament or prescription. Forty-two of these courts were abolished in 1883 (*r*). The re-

(*k*) Curia Quinque Portuum apud Shepway (4 Co. Inst. 224).

(*l*) Knocker, Grand Court of Shepway.

(*m*) Brotherhood, in Queen Elizabeth's charter called "brotheryeeld general," is the joint association and brotherly community one with another of the Cinque Ports and two ancient towns (Jeake, Charters of the Cinque Ports, p. 90).

(*n*) So called because the corporate members are guests that are invited to appear and sit with the Ports and towns to consult about the general state of their affairs (Jeake, Charters of the Cinque Ports, p. 91).

(*o*) See Jeake, Charters of the Cinque Ports, pp. 90 *et seq.*

(*p*) See p. 117, *ante*. The last occasion on which the courts were held was just before the coronation of His Majesty King Edward VII.

(*q*) These courts were established by the County Courts Act, 1846 (9 & 10 Vict. c. 95), to supersede the Courts of Request, and other courts for the recovery of small debts, created under a great number of local and personal statutes. The county courts are now regulated by the County Courts Act, 1888 (51 & 52 Vict. c. 43), and the County Courts Act, 1903 (3 Edw. 7, c. 42), and the rules made thereunder. See title COUNTY COURTS, Vol. VIII., p. 405.

(*r*) Municipal Corporations Act, 1883 (46 & 47 Vict. c. 18).

SECT. 1. In General.

mainder still exist, and although the greater part of them have been in abeyance for many years (*s*), the corporations to which they were granted can still be compelled by mandamus to hold them and to entertain pleas (*a*); mere non-user does not take away the jurisdiction (*b*).

Extension of jurisdiction.

276. In 1835 (*c*) there was conferred on such of these courts not regulated by any local Act of Parliament as had not previously possessed it, and in which a barrister of five years' standing acts as judge or assessor, jurisdiction to try actions of assumpsit, covenant, debt (whether by specialty or by simple contract), trespass, and trover, provided the sum or damages sought to be recovered does not exceed £20, and actions of ejectment wherein the rent of the premises possession whereof is sought to be recovered does not exceed £20, and upon which no fine is reserved or made payable.

Excluding the jurisdiction.

277. If the town council of a city or borough, or a majority of the ratepayers in any parish within the limits of which a court of local jurisdiction, other than a county court, is established, or into the limits of which city, borough, or parish the jurisdiction of such court shall extend, present a petition to His Majesty in Council that the jurisdiction of the local court be excluded in any causes whereof the county court has cognisance, then after two months' notice of the petition by public advertisement in such city, borough, or parish, and in some newspaper therein circulated, if no caveat be entered or counter-petition presented, an Order in Council may be made declaring the exclusion of the jurisdiction of such local court throughout the whole or any part of the district assigned or which may hereafter be assigned to such county court.

If a caveat is issued or a counter-petition presented, the matter is to be referred to the Judicial Committee of the Privy Council for report (*d*).

(*s*) There are reports in the Civil Judicial Statistics, 1868—1905, of twenty-four of these courts holding sittings.

(*a*) *R.* v. *Hastings Corporation* (1822), 1 Dow. & Ry. (M. C.) 53 (in this case no court had been held for fifty-two years); *R.* v. *Wells Corporation* (1836), 4 Dowl. 562 (in this case no court had been held for two hundred years, and it was alleged by the corporation that the form of procedure was unknown, but in each case a rule *nisi* was made absolute). In 1894 the Recorder of Worcester doubted whether he was the proper judge of the Worcester Court of Pleas, and refused to entertain a plea for breach of promise of marriage (96 L. T. Jo. 267). A mandamus was applied for on the part of the plaintiff to compel the corporation of Worcester and their recorder to hold a court and entertain the plea. A rule *nisi* was granted on 13th March, 1894, and was directed to be served on the Attorney-General (*Times* Newspaper, 14th March, 1894). On 7th May, 1894, the rule *nisi* was made absolute after counsel for the plaintiff and the corporation and for the Attorney-General had been heard. No writ of mandamus was actually issued on the corporation, and the Recorder acted on the order.

(*b*) *A.-G. of Isle of Man* v. *Cowley* (1859), 12 Moo. P. C. C. 27; *R.* v. *Havering-atte-Bower* (1822), 5 B. & Ald. 691.

(*c*) Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 118. This jurisdiction was continued by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 183, which Act repealed the former Act. See also the Borough and Local Courts of Record Act, 1872 (35 & 36 Vict. c. 86).

(*d*) County Courts Act, 1852 (15 & 16 Vict. c. 54), s. 7, repealed and re-enacted

Alteration of district.

278. His Majesty has power, by Order in Council, to enlarge the district of any inferior court of record, or where any part of the district is comprised within the jurisdiction of any like court to contract the same, and to make any alteration or regulation for the holding or sitting of the court both as to time and place, notwithstanding any provision in any Act constituting the court. No such Order can take effect in respect of any court not having a judge who is either a barrister or special pleader, or a solicitor who has practised as a solicitor for ten years (*e*). This power has never been exercised.

There is also power by Order in Council to confer on these courts the same jurisdiction in equity and in Admiralty respectively as any county court now has, or may hereafter have (*f*), and power by Order in Council on the joint petition of the council of a borough and of the justices for the county in quarter sessions to extend the area of the jurisdiction of a borough civil court over any district adjacent to the borough within the jurisdiction of those quarter sessions (*g*). Neither of these powers has ever been exercised.

Defences and counter-claims.

279. Inferior courts of record which have jurisdiction in equity, or at law and in equity, and in Admiralty respectively, have also had conferred upon them jurisdiction to entertain defences or counter-claims involving matter beyond their jurisdiction so far as they relate to the demand of the plaintiff and to the defence thereto, but no relief exceeding that which the court has jurisdiction to administer can be given to the defendant upon any such counterclaim. In case of such a counterclaim power is given to the High Court on the application of either party to order the transfer of the whole proceeding from the inferior court to the High Court (*h*).

The jurisdiction of these inferior courts to entertain counter-claims has been further extended (*i*) so as to enable an inferior court to hear and determine a counterclaim—(1) when the cause of action is outside the local limits of its jurisdiction, but is within the limits of the jurisdiction of any other inferior court of record (*k*); or (2) when the counterclaim involves more than one

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by County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 7. The Orders in Council made under this power are referred to under the several courts in respect of which they have been made. Apparently Orders in Council already made under this enactment are not affected by the recent increase in the limit of the jurisdiction of county courts to £100 (County Courts Act, 1903 (3 Edw. 7, c. 42), s. 3).

(*e*) Small Debts Act, 1845 (8 & 9 Vict. c. 127), s. 9. As to compensation of officers and notice of the Order, see the section.

(*f*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 88. An inferior court has, as regards all causes of action within its jurisdiction for the time being, power to grant the same relief, redress, and remedy, and to give effect to every defence or counterclaim, in as full and ample a manner as might and ought to be done in the like case by the High Court (*ibid.*, s. 89). See also Yearly Supreme Court Practice, 1909, p. 1314.

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 185.

(*h*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 90. See also titles COUNTY COURTS, Vol. VIII., pp. 432, 434; SET-OFF AND COUNTERCLAIM; and Yearly Supreme Court Practice, 1909, p. 1315.

(*i*) Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 18.

(*k*) This provision may be very far-reaching. Thus, if in an action in the Salford Hundred Court (which has jurisdiction up to £50) a counterclaim was raised

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cause of action, as to each of which a separate action might have been maintained being within the jurisdiction of the court, and the aggregate amount of the counterclaim exceeds the jurisdiction of the court; or (3) when the amount of the counterclaim exceeds the jurisdiction, provided the plaintiff does not object in writing within the prescribed time. In addition, in any case where the counterclaim involves matter beyond the jurisdiction of the court, the court may on such terms, if any, as it thinks just either adjourn the hearing or stay execution on the judgment to enable any party to apply to remove the proceedings into the High Court, or to enable the defendant to prosecute a cross action in any court of competent jurisdiction, and in default of any such application being made or action being brought the court shall after the expiration of the time limited have jurisdiction to hear and determine the whole matter in controversy to the same extent as if the parties had consented thereto.

Application of Judicature Act, 1873, s. 25.

280. The rules of law contained in s. 25 of the Judicature Act, 1873 (*l*), as amended by s. 10 of the Judicature Act, 1875 (*m*), are applied to inferior courts (*n*) so far as the matters to which they refer are cognisable by such courts.

SUB-SECT. 2.—*Procedure and Power to make Rules.*

Procedure and rules.

281. The procedure in inferior courts of record is generally similar to that which existed in the superior courts of common law before the passing of the Common Law Procedure Act, 1852 (*o*), with the exception that all actions are to be commenced by writ of summons (*a*). In some cases, however, rules regulating practice and procedure have been made by the judges, and approved by the judges of the superior courts. In other cases Orders in Council have applied to particular courts the provisions contained in the schedule to the Borough and Local Courts of Record Act, 1872 (*b*), and the provisions of other Acts.

All the powers under which these Orders were made (*c*) continued in force until 1883, when they were repealed, except the power of the Act of 1872, with the condition that where any repealed enactment had been extended to a local court by Order in Council such

based on a cause of action arising wholly at Wallingford, the section would give the Salford Hundred Court jurisdiction, whatever the amount of the counterclaim.

(*l*) 36 & 37 Vict. c. 66.

(*m*) 38 & 39 Vict. c. 77.

(*n*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 91. See *King* v. *Hawkesworth* (1879), 4 Q. B. D. 371. See title COUNTY COURTS, Vol. VIII., p. 432.

(*o*) 15 & 16 Vict. c. 76.

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 181.

(*b*) 35 & 36 Vict. c. 86. The schedule to the Act has been applied to the following courts:—Bristol Courts of Tolzey and Pie Poudre; Great Yarmouth Borough Court; Kingston-upon-Hull Court of Record; London Mayor's Court; Norwich Guildhall Court; Poole Civil Court of Record; Scarborough Court of Pleas; York Court of Record. See under those courts, *post*.

(*c*) Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 228; Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 105; Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), s. 9; Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 44.

enactment should be construed as if it were contained in a local and personal Act relating to such court (*d*). A power was substituted to apply by Order in Council to any local court the provisions of the Judicature Acts and the Rules of the Supreme Court. This last power has only been exercised in the case of the Court of the Vice-Chancellor of the University of Oxford, and in that case only as to appeals (*e*).

The procedure varied in different courts, but it was generally based on either the old practice of the Court of King's Bench or on that of the Court of Common Pleas, that is to say, by attachment of the goods or person of the defendant to answer the claim of the plaintiff. But this procedure ceased in 1838, when arrest on mesne process was abolished (*f*). So that the procedure in those courts for which rules have not been made since that date would not appear to be very determinate. Probably, however, the next step after the service of the writ of summons, if the defendant does not enter an appearance, would be to proceed in the case of actions of debt or covenant by distress on the defendant's goods to compel an appearance (*g*), except in the case of those courts where judgment went in default of appearance. The object of compelling the defendant to appear is that in his absence the plaintiff's complaint cannot be heard (*h*). If appearance is entered, the ensuing steps would be declaration, plea, joinder of issue, and trial.

The judge of a borough civil court, if he is a barrister of five years' standing, has power to make rules of procedure to be approved by the recorder, if he is not judge of the court or does not act as the judge's deputy (*i*), and also by the Rule Committee of the Supreme Court (*k*).

There is also power by Order in Council to make rules (*l*) as to the appointment of deputy and assistant judges (*m*).

SUB-SECT. 3.—*Appeals.*

Appeals.

282. An appeal lies from all inferior courts of record to a divisional court of the King's Bench Division on notice of motion (*n*).

(*d*) Statute Law Revision and Civil Procedure Act, 1883 (46 & 47 Vict. c. 49), ss. 3, 5—8.

(*e*) See p. 187, *post.*

(*f*) Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 1. Mesne process was the writ of *capias* issued after the writ or other process commencing the action. It was so called because it came between the primary process and the final process to execute the judgment. See Tidd, Practice, 10th ed., p. 127, note (a).

(*g*) *William* v. *Bagot* (*Lord*) (1825), 3 B. & C. 772.

(*h*) *Ibid.* at p. 788.

(*i*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 182 (1), (2).

(*k*) Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 24. This approval had formerly to be given by three judges of the superior courts of common law (2 & 3 Vict. c. 27, s. 1), afterwards by three judges of the High Court (Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 182).

(*l*) Borough and Local Courts of Record Act, 1872 (35 & 36 Vict. c. 86), s. 7.

(*m*) See p. 135, *post.*

(*n*) *Darlow* v. *Shuttleworth*, [1902] 1 K. B. 721. Prior to this case it was

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All conditions precedent to the former right to bring error are still conditions precedent to the right to appeal, and the objection must have been distinctly taken and brought to the attention of the judge before verdict. The objection also must be on a point which could have been the subject of a bill of exceptions (*o*).

But it is unnecessary to draw up a bill of exceptions (*p*) before verdict, or to have the same sealed by the judge, or to comply with any other requirements in the nature of procedure on which the right to bring error depended.

SUB-SECT. 4.—*Judges and Sittings.*

Judges of local courts.

283. In very few of the charters granting these courts was there any provision made for the judge being a professional lawyer. But now where there is a recorder of the borough he is to act as judge, except where the court is regulated by a local Act of Parliament, or where at the time of the passing of the Municipal Corporations Act, 1835 (*q*), a barrister of five years' standing acted as judge or assessor of the court. In those cases where there was in 1835 a judge who was a barrister of five years' standing the appointment of the judge is by the corporation. In other cases the officer of the borough designated by the charter or by custom of the court is to be the judge, and power is given to the corporation to appoint such officer (*r*).

If an Order in Council (*s*) should be made enlarging the district of any inferior court of record the judge of which is not a barrister, or a special pleader, or a solicitor who has practised as such for ten years, the persons in whom the appointment is vested must within three months of the Order in Council, at a meeting called for the purpose, appoint a judge qualified as aforesaid, subject to His

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doubtful how far and in what manner appeals to the High Court lay from those inferior courts of record to which the enactments as to appeals from county courts had not been applied by Order in Council under s. 15 of the Judicature Act, 1875 (38 & 39 Vict. c. 77), and where there were neither any statute nor any rules of the inferior court regulating such appeals. In 1888 a parliamentary paper (Parliamentary Paper, 1888 (C. 187), continued by Parliamentary Paper, 1888 (C. 187, I.)) reported that in some cases it was unknown whether there was an appeal, and that in others there was none.

(*o*) *Darlow* v. *Shuttleworth*, [1902] 1 K. B. 721, at p. 733. By the Inferior Courts Act, 1779 (19 Geo. 3, c. 70), s. 5, as amended by the Imprisonment for Debt Act, 1827 (7 & 8 Geo. 4, c. 71), s. 6, error or *supersedeas* in the case of a verdict under £20, in any inferior court of record, may only be brought if the defendant finds two sureties to assure the prosecution of the appeal, and the payment of the debt and costs of the appellant if unsuccessful.

(*p*) By the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 69, Sched. XLIX., repealed by the Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 16, bills of exception and proceedings in error were abolished so far as regards the High Court.

(*q*) 5 & 6 Will. 4, c. 76.

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. In 1894 the Recorder of Worcester had doubts as to the meaning of this enactment, and refused to hold the Court of Pleas of the borough. A mandamus, however, was applied for, and a rule absolute made commanding him to hold the court (see 96 L. T. Jo. 267).

(*s*) Under the Small Debts Act, 1845 (8 & 9 Vict. c. 127), s. 9.

Majesty's approval, and in default of such appointment His Majesty has power to appoint a duly qualified judge (*a*).

Every judge or assessor of a borough civil court other than the mayor holds (*b*) his office during good behaviour.

Deputy judges.

284. The recorder has power given to him to appoint a barrister of five years' standing to act as deputy for him at the present or next court or courts.

The Crown is empowered (*c*) by Order in Council to make rules as to the appointment of deputy judges and assistant judges. This power has been exercised by an Order in Council of 26th June, 1873 (*d*), which requires the appointment to be in writing, specifying the reasons for, the extent of, and the duration of the appointment, and that it shall be approved by the Lord Chancellor.

The authority having the appointment of a recorder has power to appoint a deputy if the recorder is unable to do so (*e*).

Removal of judges.

285. The Lord Chancellor is empowered to remove any judge of an inferior court of record for misbehaviour or incapacity (*f*).

Sittings of courts.

286. The courts are directed to be held for the trial of issues of fact and of law four times at least in each year, and with no greater interval than four months between two consecutive courts.

Subject to this provision, in cases where the recorder is the judge, the court is to be held when the recorder thinks fit or the Secretary of State for the Home Department directs (*g*).

SUB-SECT. 5.—*Juries.*

Juries.

287. All burgesses are, unless exempt or disqualified, qualified and liable to serve on juries for the trial of issues in the borough civil court. The clerk of the peace and the registrar of the borough civil court are directed to summon a sufficient number of persons qualified and liable if there is any cause to be tried at the borough civil court. No person shall be summoned to serve as a juror more than once a year (either at quarter sessions or in the civil court) until every person qualified and liable has been summoned. Non-attendance or wilful withdrawal is punishable by fine at the discretion of the court (*h*).

SUB-SECT. 6.—*Officers and Fees.*

Officers and fees.

288. Corporations are under the obligation to appoint a registrar for the borough civil court, who is to be either the town clerk or a separate officer, and also other requisite officers (*i*).

(*a*) Under the Small Debts Act, 1845 (8 & 9 Vict. c. 127), s. 9.
(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 177.
(*c*) Borough and Local Courts of Record Act, 1872 (35 & 36 Vict. c. 86). s. 7.
(*d*) Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 5.
(*e*) Recorders, Stipendiary Magistrates, and Clerks of the Peace Act, 1906 (6 Edw. 7, c. 46).
(*f*) Small Debts Act, 1845 (8 & 9 Vict. c. 127), s. 10.
(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 180.
(*h*) *Ibid.*, s. 186. As to jurors in the Cinque Ports, see s. 248 (6), which, however, only mentions quarter sessions. See generally title JURIES.
(*i*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 178 (1), (2).

SECT. 1. In General.

The town council are empowered to fix fees subject to the approval of the Home Secretary. If fees are not so fixed, they are to be the same as those taken before 1835 (*k*).

SUB-SECT. 7.—*Removal of Causes.*

Certiorari.

289. The removal of causes from inferior courts of record into the High Court is effected by writ of *certiorari* issued to the inferior court of record (*l*), directing the record to be removed into the High Court (*m*). *Certiorari* always lies except where taken away by statute (*n*). It appears, therefore, that any action in an inferior court can be removed into the King's Bench Division at any stage before judgment (*o*). In addition to removal by *certiorari*, any proceedings in an inferior court in which the defence or a counter-claim involves matter beyond the jurisdiction of that court may be transferred to the High Court on an order of the High Court or a judge thereof, which may be made on the application of any party to the proceedings (*p*). Judgments of an inferior court may be removed into the High Court for the purpose of execution (*q*).

SECT. 2.—*Courts of Pie Poudre.*

Pie poudre courts.

290. Courts of pie poudre (*r*) are in many cases granted to boroughs in their charter. These courts, which are courts of record, had jurisdiction to decide as to all manner of contracts, trespasses, covenants, and debts done within the time of fairs or markets and within their precincts. The jurisdiction only extends

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(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 178 (3), (4).

(*l*) There were two modes by which causes in the inferior courts could be removed into the superior courts at Westminster. The first was by *certiorari*, and the second by a writ of *habeas corpus cum causâ*, which lay when the defendant had been attached by his person or arrested on mesne process, and was directed to the officer in whose custody he was to bring him up and surrender him to the marshal of the King's Bench or the warden of the King's prison. It also lay to his bail for the same purpose. Since 1838, when mesne process in inferior courts was abolished by the Judgments Act, 1838 (1 & 2 Vict. c. 110), this mode of removal by *habeas corpus cum causâ* is no longer in use (see Archbold, Practice, 8th ed., p. 1152).

(*m*) Formerly into the Chancery or the King's Bench (Fitz. Nat. Brev. 245; see also Archbold, Practice, 8th ed., p. 1156).

(*n*) *Goodright* d. *Sadler* v. *Dring* (1823), 2 Dow. & Ry. (K. B.) 407; *Patterson* d. *Gradridge* v. *Eades* (1824), 3 B. & C. 550. "A writ of *certiorari* is a matter of course"; *Symonds* v. *Dimsdale* (1848), 2 Ex. 533. As to *certiorari* generally, see title CROWN PRACTICE.

(*o*) *R.* v. *Seton* (*Inhabitants*) (1797), 7 Term Rep. 373; *Kemp* v. *Balne* (1844), 1 Dow. & L. 885.

(*p*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 90. See title COUNTY COURTS, Vol. VIII., p. 434.

(*q*) Inferior Courts Act, 1779 (19 Geo. 3, c. 70), s. 4; Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 22; Borough and Local Courts of Record Act, 1872 (35 & 36 Vict. c. 86), Sched. 9, 12. And see titles EXECUTION; JUDGMENTS AND ORDERS.

(*r*) *Pie poudre* is usually derived from *pes pulvericatus* (dusty foot). Daines Barrington, however, suggests that the true derivation is *pied pulderaux* (old French for "pedlar") (Observations on Statutes, 3rd ed., p. 382. See also Gneist, History of the English Constitution, Vol. I., p. 381; Carter, History of English Legal Institutions, 1st ed., p. 256). As to these courts see stat. (1477-8) 17 Edw. 4, c. 2.

to questions arising at the particular fair or market in question, and not to those arising at any previous one. If it appears that the cause of action is not within the jurisdiction of the court of pie poudre, the plaintiff is remitted for his remedy to the ordinary courts. The law administered in the courts of pie poudre is the law merchant. The court of pie poudre is only authorised to sit on a day for which the fair or market is granted by the charter, and not on any other day on which the fair or market may actually be held (*s*). The procedure in courts of pie poudre is simple—pleas are begun without a writ, and an answer has to be made within a day, in many cases within an hour. Pleas may be adjourned from hour to hour and from day to day. Judgment may be deferred to the time of another fair or market (*t*). Courts of pie poudre are almost obsolete, except in the case of Bristol (*u*).

SECT. 3.—*Court of the Clerk of the Markets.*

Clerk of the Markets.

291. There was formerly an officer of the King's household called the Clerk of the Markets of the King's Household, who had jurisdiction to inquire whether weights and measures were according to the King's standard or no (*a*). The charters of many boroughs contain a grant of a court of the Clerk of the Markets (*b*). By such a grant the jurisdiction of the Clerk of the Markets of the King's Household is ousted, and the corporation has jurisdiction to inquire of weights and measures (*c*) in its court of the clerk of the markets.

The Clerk of the Markets is entitled to a fee for sealing weights and measures, but not merely for viewing them (*d*).

SECT. 4.—*Courts of the Staple.*

Courts of the staple.

292. Some boroughs possessed a court of the staple (*e*), in which justice was administered according to the law merchant by the

(*s*) Y. B. 22 Edw. 4, 33 (B).

(*t*) Selden Society, Vol. XXIII., p. 26. "Secundam naturam curie pedis pulveris ati percusum fieri debet de hora in horam a die in diem et non ulterius." P. R. O. Coram Rege Roll, 802, m. 87a. This was on account of the need of expedition "propter personas qui celerem habere debent justiciam, sicut sunt mercatores quibus exhibetur justicia pepoudrous" (Bract. f. 334).

(*u*) Selden Society, Vol. XXIII., p. 25.

(*a*) He is to this day called *clericus mercati hospitii regis*, for of ancient time there was a continual market kept at the court gate (4 Co. Inst. 273).

(*b*) "Le clerke de market est auciet officer, et couiēt voire que touts, weights et measures soient accordant al estanderd le roy, que demur in leschequer a Westm̄, et il tient court, et fait proces al vicount, et bailies de villes de retorner panels auant lui a certaine jour, per que il inquirera de choses incidents a son office" (Crompton on Courts, p. 220). "This officer hath a court which he may still keep, and hold plea therein of that which belongs to his office . . . but it seems he can inflict no punishment, nor proceed further than to take the presentment of the offenders, and then impose fine or amerciament upon them according to the statutes" (Sheppard, Office of the Clerk of the Market, pp. 118, 119).

(*c*) 4 Co. Inst. 274.

(*d*) As to corporations having a grant of this franchise, see *post*, under the names of the several corporations.

(*e*) "The word staple, anciently written estaple, commeth of the French word *estape* which signifieth a mart or market" (4 Co. Inst. 238).

SECT. 4. Courts of the Staple.

mayor and constables of each staple. A statute of Edward III. (*f*) enacted that merchants coming to the staple should be ruled by the law merchant as to all things touching the staple; pleas of land, however, were to be tried by the common law. A mayor of the staple and two constables were elected annually by the merchants aliens as well as denizens; and two aliens were chosen by the merchant strangers to try causes touching such merchants (*g*). When an inquest (jury) was had to try a cause it consisted wholly of aliens or denizens when both parties were aliens or denizens respectively, but half of aliens and half of denizens when one party was an alien and the other a denizen (*h*). The mayor and the constables were to be sworn in the Chancery to do lawfully that which pertain unto them (*i*). These courts are now practically obsolete.

SECT. 5.—*Particular Courts* (*j*).

(i.) *Abingdon.*

Abingdon.

293. The Abingdon Court of Record has jurisdiction in personal actions up to £10 (*k*). It is directed to be held weekly. There is a recorder of Abingdon, who is consequently judge of the court (*l*).

The proceedings are as at common law under the old practice of the superior courts before 1852. The court has been in abeyance since 1836. No rules of court or tables of fees are in existence.

There is also a court of pie poudre (*m*), which had long been out of use in 1835, and a court leet (*n*).

(ii.) *Alston Moor.*

Alston Moor.

294. The Lords of the Admiralty are lords of the manor of Alston Moor, in the county of Cumberland, and have there a court

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(*f*) Statute of the Staple (27 Edw. 3, stat. 2), repealed by Statute Law Revision Act, 1863 (26 & 27 Vict. c. 125). This repeal does not "affect any principle or rule of law or equity, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, franchise, liberty, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognised, or derived by, in or from any enactment hereby repealed." The staple of wools, leather, woolfels, and lead were directed to be held at Newcastle-upon-Tyne, York, Lincoln, Norwich, Westminster, Canterbury, Chichester, Winchester, Exeter, and Bristol, and at Kaermerdyn in Wales (*ibid.*, c. 1); "and because that merchants may not often long tarry in one place for levying of their merchandises, we will and grant, that speedy right be done from day to day and from hour to hour" (*ibid.*, c. 19).

(*g*) Statute of the Staple (27 Edw. 3, stat. 2, cc. 21, 24).

(*h*) *Ibid.*, c. 8.

(*i*) *Ibid.*, c. 23.

(*j*) Where a borough referred to in this section has a recorder it is so stated.

(*k*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol. 7 Eliz., Part II. (1565)).

(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*m*) See p. 137, *ante*.

(*n*) This court is held under the authority of a charter of Philip and Mary (Pat. Rol. 3 & 4 Phil. & Mar., Part VI. (1557)). Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 3—6. Information kindly given by the town clerk. See p. 215, *post*.

leet (*o*) and view of frankpledge with a court baron (*p*) and customary court (*q*). The jurisdiction extends to debts and amerciaments up to £2, and to the assessment of damages done by the working of mines and minerals within the said manor. The judge is a certified solicitor appointed by the Lords of the Admiralty, with a salary of £10 a year. There is also an officer of the court, with a salary of £5 a year (*r*). The latest plaints entertained in this court seem to have been in 1895 (*s*).

(iii.) *Andover.*

Andover.

295. The borough of Andevor, or Andover, has a court of record (*a*) with jurisdiction over all classes of actions where the amount in dispute does not exceed £40. The court has apparently been in abeyance since 1812 (*b*). The borough has a recorder, who is consequently judge of the court (*c*). The corporation has also a court leet (*d*).

(iv.) *Arundel.*

Arundel.

296. The incorporation of Arundel rests on a judgment of the Queen's Bench in the reign of Elizabeth (*e*) on an information of *quo warranto*, in which it was held that the inhabitants are entitled to hold a court every three weeks with a jurisdiction limited to 40*s*., and in that court to choose portreeves, constables, and sergeants-at-mace. Apparently there has been no action in this court since 1798 (*f*).

(v.) *Banbury.*

Banbury.

297. The Banbury Court of Record (*g*) has jurisdiction over all classes of actions where the amount in dispute does not exceed £40. The pleadings are as at common law under the old practice. The court was held before the mayor or his deputy, assisted by the town clerk as assessor and registrar. The court was for a long time in abeyance, but was revived shortly before 1835, and the practice and machinery revised by Serjeant Talfourd, the then deputy recorder. The borough has a recorder, who is consequently the judge of the court.

A copy of regulations or "Ordynances for the Courte and the

(*o*) See p. 215, *post*.
(*p*) See p. 216, *post*.
(*q*) See p. 216, *post*.
(*r*) Parliamentary Paper, 1887 [C. 187], lxxxii. 169.
(*s*) Judicial Statistics for 1894, Parliamentary Paper, 1896 [C. 8263], xciv. 1.
(*a*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol. 41 Eliz., Part XII., f. 23).
(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1081—1088.
(*c*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176.
(*d*) See p. 215, *post*.
(*e*) 28 Eliz., 22nd June, 1586.
(*f*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., p. 669.
(*g*) This court is held under the authority of a charter of George I. (Pat. Rol. 4 Geo. 1 (1718), Part VII., No. 1), confirming charter 1 Mary, granted 26th January, 1554.

SECT. 5. Particular Courts.

Offys's of the Same," dated 4 & 5 Phil. & Mar., is in existence, as is a printed set of rules and forms dated 1841.

The borough has also a grant of courts of pie poudre (*h*) during the fairs and markets, but these courts have long been disused (*i*).

There is also a court leet (*k*).

(vi.) *Barmote Courts of High Peak.*

High Peak Barmote Courts.

298. The Great Barmote (*l*) Courts and the Small Barmote Courts of High Peak are ancient courts with jurisdiction relating to mining rights and civil pleas in the King's Field or King's Fee (*m*) and other parts of the hundred of High Peak, in the county of Derby, where His Majesty is entitled to mineral duties.

These courts are now regulated by statute (*n*), and are courts of record (*o*). The judge is the steward, who is appointed by His Majesty under the seal of the Duchy of Lancaster, or his deputy. The qualification for the office is either being a barrister of five years' standing, a special pleader of ten years' standing, or a solicitor of seven years' standing (*p*).

The officers of the courts are the head barmaster and deputy barmasters (*q*). Two Great Barmote Courts are directed to be held at Moniash during the year, but at present only one is held, about Midsummer (*r*), and Small Barmote Courts at places fixed by the steward as they may be required (*s*). The business transacted in the Great Barmote Court is the swearing in of the grand jury, and bills of directions, cross bills etc. relating to mining rights (*t*). The jurisdiction of the Small Barmote Courts includes actions of title, trespass, and debt (*u*). This jurisdiction is not exclusive (*v*).

Causes may be removed by *certiorari* on reasonable cause shown by affidavit, but not otherwise (*w*).

The steward and grand jury have power to make new rules and customs, with the approval of the Chancellor of the Duchy of Lancaster, for the better regulation of the working and carrying on

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(*h*) See p. 136, *ante*.

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 9—15. Information kindly given by the town clerk.

(*k*) See p. 215, *post*.

(*l*) Barmote, *i.e.* "bargh-mote." Bargh="a mine whereout of metalls are digged" (W. Robertson (1693), Phraseologia Generalis 207). The privileges of the miners in High Peak were ascertained and confirmed at an inquisition held at Ashbourne 1287 A. D.

(*m*) The King's Field of High Peak includes the liberties of Castleton, Bradwell, Hucklow, Winster, Moniash, Taddington, and Upper Haddon.

(*n*) High Peak Mining Customs and Mineral Courts Act, 1851 (14 & 15 Vict. c. 94). See also title MINES, MINERALS AND QUARRIES.

(*o*) *Ibid.*, s. 15.

(*p*) *Ibid.*, ss. 3, 4, 5, 15.

(*q*) *Ibid.*, ss. 9—14.

(*r*) Information kindly given by the Barmaster of the High Peak.

(*s*) High Peak Mining Customs and Mineral Courts Act, 1851 (14 & 15 Vict. c. 94), s. 6.

(*t*) *Ibid.*, s. 7.

(*u*) *Ibid.*, ss. 7, 16.

(*v*) *Ibid.*, s. 55.

(*w*) *Ibid.*, ss. 29, 52.

of the mines within the district, and for the guidance and protection of the mines, and for regulating the practice and proceedings of the Great and Small Barmote Courts and of views and other proceedings, and for the execution of any process of these courts (*x*). New and additional rules and customs were made in 1859 under this power (*y*).

The procedure as to grant of new trials, setting aside judgments, and stay of proceedings is similar to that of the High Court (*z*). The issue of subpœnas (which may be served in any part of England), execution, and other matters are regulated by statute (*z*).

(vii.) *Barmote Courts of Wirksworth and its Liberties.*

Wirksworth Barmote Courts.

299. These are similar courts to those of High Peak (*a*). They also are regulated by statute (*b*). The jurisdiction extends over the King's Field in the soke and wapentake of Wirksworth, and also over five other liberties (*c*). The Crown has power to appoint a steward for the Wirksworth Barmote Courts (*d*), and the persons entitled to the first estate of freehold in the mineral duties payable in the several liberties have power to appoint stewards for these liberties (*e*). The qualification of stewards (*f*), provisions as to *certiorari* (*g*), jurisdiction of courts (*h*), procedure etc., are similar to those in the case of the Barmote Courts of High Peak. The courts are courts of record (*i*). Rules and customs are scheduled to the Act regulating the court (*k*).

(viii.) *Barnstaple.*

Barnstaple.

300. The corporation of Barnstaple have a court of record (*l*), which was directed to be held before the mayor, recorder, and aldermen, or any two of them, and has jurisdiction in personal actions to any amount. The practice is similar to that of the King's Bench before the Common Law Procedure Act, 1852 (*m*). It is said that the only table of costs in existence is nearly three hundred years old.

(*x*) High Peak Mining Customs and Mineral Courts Act, 1851 (14 & 15 Vict. c. 94), s. 56.
(*y*) Statutory Rules and Orders Revised, Vol. VI., Inferior Courts, England, p. 63.
(*z*) High Peak Mining Customs and Mineral Courts Act, 1851 (14 & 15 Vict. c. 94).
(*a*) See p. 140, *ante*.
(*b*) Derbyshire Mining Customs and Mineral Courts Act, 1852 (15 & 16 Vict. c. clxiii.).
(*c*) (1) Ashford, Hartington, Peak Forest, and Tideswell; (2) Crich; (3) Stoney Middleton and Eyam; (4) Youlgrave; and (5) Litton.
(*d*) Derbyshire Mining Customs and Mineral Courts Act, 1852 (15 & 16 Vict. c. clxiii.), s. 3.
(*e*) *Ibid.*, ss. 3, 4.
(*f*) *Ibid.*
(*g*) *Ibid.*, ss. 38, 60.
(*h*) *Ibid.*, s. 16.
(*i*) *Ibid.*, s. 24.
(*k*) *Ibid.*, Schedule.
(*l*) This court is held under the authority of a charter of 8 James I. (1610) (Pat. Rol., 9 Jac. 1, Part II., No. 15).
(*m*) 15 & 16 Vict. c. 76.

SECT. 5. Particular Courts.

No rules of the court are known to be in existence (*n*). The borough has a recorder, who is consequently judge of the court (*o*).

(ix.) *Basingstoke.*

Basingstoke.

301. The Basingstoke Court of Record has jurisdiction in personal actions up to £10 (*p*). The court is directed to be held weekly before the mayor, chief steward, and aldermen. It has been in abeyance for a very long period.

There is also a court of ancient demesne for the levying of fines and recoveries of lands of ancient demesne within the manor of Basingstoke (*q*) and a court leet (*r*), having jurisdiction over nineteen tithings, which is held twice a year before the town clerk as steward of the leet (*s*).

The charters also grant to the corporation a court of pie poudre (*t*), which, however, has not been held for many years.

(x.) *Bath.*

Bath.

302. The Bath Court of Record (*u*) has jurisdiction in personal actions to any amount within the city and its suburbs, liberties, and precincts, including Bathwick (*x*). The procedure is the same as that of the old superior courts before 1852. There is a recorder, who is consequently judge of the court. The last trial held in this court was in 1821.

There is a court leet (*y*) held before the town clerk as steward of the manor (*z*).

(xi.) *Beaumaris.*

Beaumaris.

303. The Beaumaris Court of Record (*a*) has jurisdiction over personal actions up to or exceeding 40*s*. The court is directed to be held weekly every Thursday before the mayor or bailiffs. It has been in abeyance since 1779.

(*n*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., p. 427.

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176.

(*p*) This court is held under the authority of charters of James I. and Charles I. (Originalia Rol., 20 Jac. 1, Part I., Rot. 61, granted 1st July, 1622, and Pat. Rol., 17 Car. 1, Part VI., No. 11, granted 20th August, 1621). The charters only differ in the title of the corporation.

(*q*) See title REAL PROPERTY AND CHATTELS REAL; and Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 5.

(*r*) See p. 215, *post*.

(*s*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1101, 1102. The court leet dates back at least to 1390 (Baigent and Millard, History of Basingstoke, pp. 173, 247). Information kindly given by the town clerk.

(*t*) See p. 136, *ante*.

(*u*) This court is held under the authority of a charter of George III. (Pat. Rol., 34 Geo. 3 (1790), Part VI., No. 13), granted 12th February, 1794.

(*x*) Under a charter of 32 Eliz. (Pat. Rol., f. 7) the jurisdiction did not include Bathwick, but in 1769 the jurisdiction was extended over that parish by statute (9 Geo. 3, c. 95). This statute is confirmed by the charter of George III.

(*y*) See p. 215, *post*.

(*z*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1111—1117.

(*a*) This court is held under the authority of a charter of Elizabeth (Pat. Rol., 4 Eliz., Part VII., p. 89).

A court leet (*b*), to be held twice a year, was granted by the charter, and there is a court of *pie poudre* (*c*).

(xii.) *Beccles.*

Beccles Fen Court.

304. The corporation of Beccles have a court of record, entitled the Beccles Fen Court (*d*), which has jurisdiction in actions which concern the fen or the ordinances and statutes relating to it. The court is directed to be held weekly every Tuesday before the portreeve (now mayor), surveyors, and common clerk (*e*). The court has been in abeyance since 1741. The procedure is regulated by the laws and ordinances of the town (*f*).

(xiii.) *Bedford.*

Bedford Court of Pleas.

305. The Bedford Court of Pleas (*g*) has jurisdiction in real and personal actions to any amount, except where either the corporation or the Crown is a party. The court has been in abeyance since 1789. The procedure appears to be unknown. There is a recorder of the borough, who is consequently judge of the court (*h*). There is also a court leet (*i*).

(xiv.) *Berwick-upon-Tweed.*

Berwick Court of Pleas.

306. The Court of Pleas of Berwick-upon-Tweed (*k*) has jurisdiction over all actions, real, personal, and mixed, to any amount. The court is directed to be held every second week. The procedure is by attachment of goods or by serviceable process (*l*). There is a recorder of the borough, who is consequently judge of the court (*m*).

The corporation also has a court leet (*n*), held twice a year (*o*).

(xv.) *Beverley.*

Beverley.

307. The Beverley Court of Record (*p*) has jurisdiction in actions personal and mixed to any amount. The court is directed to be

(*b*) See p. 215, *post.*

(*c*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2581—2587. See p. 136, *ante.*

(*d*) This court is held under the authority of a charter of James I.

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2129—2138.

(*f*) "A Collection of divers Public Lawes, Ordinances, and Constitutions etc.," confirmed 28th September, 1613.

(*g*) This court is held under the authority of a charter of Charles II. (Pat. Rol. 16 Car. 2, Part I., No. 3).

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176.

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2103—2116. There is a regular record of the proceedings of the court from 1626 to 1789. Information kindly given by the town clerk. See p. 215, *post.*

(*k*) This court is held under the authority of a charter of James I., 2 Jac. 1, Part XVI. The court was originally granted by a charter of 30 Edw. 1.

(*l*) A table of costs is given in the Appendix to the Report of the Municipal Corporations Commissioners, 1835, Part III., p. 1446.

(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176.

(*n*) See p. 215, *post.*

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1435—1445.

(*p*) This court is stated to be held under the authority of a charter of James II., which is not on the Patent Roll. The charters of James II. are in many

SECT. 5. Particular Courts.

held weekly before the mayor, recorder, and aldermen, or any three of them, of whom the mayor or recorder is to be one. The procedure is by way of serviceable process. A table of fees is in existence (*q*). The court fell into abeyance about 1846, after the establishment of the present system of county courts (*r*).

The corporation also has a court leet (*s*), granted by a charter of Elizabeth (*t*).

(xvi.) *Bewdley.*

Bewdley.

308. The Bewdley Court of Record (*u*) has jurisdiction in actions, mixed and personal, up to £100. It is directed to be held fortnightly before the mayor or his deputy, but has been in abeyance since about 1817.

The corporation has also a court leet (*a*), held twice a year, which also has fallen into desuetude (*b*).

(xvii.) *Bideford.*

Bideford Civil Court.

309. The Civil Court or Court of Record of Bideford (*c*) has jurisdiction over real and personal actions to any amount. It is directed by the charter to be held every three weeks, or at such other times as shall seem expedient. There is a recorder of the borough, and consequently he is the judge of the court (*d*). The practice is that of the former Court of Common Pleas at Westminster before 1852. The court is still held four times a year, but no process has been issued for many years (*e*).

(xviii.) *Birmingham.*

Birmingham.

310. The Borough Court of Birmingham (*f*) had jurisdiction conferred on it in personal actions up to £20, and in actions of

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cases of doubtful validity, but with respect to courts they are usually identical with the preceding charters, *i.e.*, in the case of Beverley, Pat. Rol., 4 Car. 1, Part III., No. 51; Pat. Rol., 15 Car. 2, Part XVI., No. 3. Each of these charters confirmed the charter of 15 Eliz., which granted the court to the corporation.

(*q*) Printed in Poulson, Beverlac, p. 419.

(*r*) Information kindly given by the town clerk.

(*s*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1453—1460. See p. 215, *post.*

(*t*) See Beverley Town Documents, Selden Society, p. xxxvii.

(*u*) This charter is held under the authority of a charter of James I. (Pat. Rol., 3 Jac. 1, Part XIV.). This patent was surrendered to James II. and a new charter granted, which surrender and grant was held to be invalid, and the charter of James I. was confirmed by a charter of 7 Ann.

(*a*) See p. 215, *post.*

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1771—1773.

(*c*) This court is held under the authority of a charter of James I. (Pat. Rol., 16 Jac. 1), granted 20th December, 1618.

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante.*

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 435—440. Information kindly given by the town clerk.

(*f*) This court was granted to the corporation by a charter of Queen Victoria (Pat. Rol., 2 Vict., Part XIV., No. 7), granted 31st October, 1838. N.B.—This is the latest instance of the grant of a local court of record by charter.

ejectment between landlord and tenant where the rent does not exceed £20 and no fine is reserved. This jurisdiction is now excluded in all cases in which the county court has jurisdiction (*g*). There is a recorder of Birmingham, who is consequently judge of the court (*h*). The court has not been held for many years.

(xix.) *Blandford Forum.*

Blandford Forum.

311. The Blandford Forum Court of Record (*i*) has jurisdiction in personal actions up to £10. The court is directed to be held every three weeks before the mayor or his deputy or the town clerk (*j*). The court has been in abeyance since the end of the eighteenth century, and no records are known to be in existence.

The corporation has also a court leet (*k*), under a grant of the manor by James I. of even date with the charter (*l*).

(xx.) *Bodmin.*

Bodmin.

312. The Bodmin Court of Record (*m*) has jurisdiction in all personal actions not exceeding £100. It is directed to be held on Monday in each week before the mayor or common clerk or town clerk. It has also jurisdiction in actions as to land within the borough. There are no rules of court or tables of fees in existence. This court has not been held for over one hundred years.

There is also a court of pie poudre (*n*), but it has been in abeyance from before 1835 (*o*).

(xxi.) *Boston.*

Boston Court of Pleas.

313. The Boston Court of Pleas (*p*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held twice a week before the mayor, four aldermen justices of the peace (two of the quorum), the recorder, and town clerk.

The process of the court is as in the old superior courts of common law before 1852. The court appears to have been in abeyance for many years.

(*g*) By Order in Council dated 29th December, 1853 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 6).

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*i*) This court is held under the authority of a charter of James I. (Pat. Rol., 3 Jac. 1, Part VII., f. 12), granted 15th November, 1605.

(*j*) Formerly before the bailiff, or the steward or recorder, or his deputy, the town clerk.

(*k*) See p. 215, *post*.

(*l*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1133, 1134.

(*m*) This court is held under the authority of a charter of George III. (Pat. Rol., 38 Geo. 3, Part IX., No. 6).

(*n*) This court is granted by the charter of George III.; see p. 136, *ante*.

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 443—445.

(*p*) This court is held under the authority of a charter of Henry VIII. (Pat. Rol., 37 Hen. 8, Part IV.).

SECT. 5. Particular Courts.

The corporation has also a court of pie poudre (*q*) and a grant of a court of the Clerk of the Market (*r*).

The charter of Henry VIII. grants a court leet (*s*) to the corporation, with jurisdiction over the manors of Roose Hall, Hussey Hall, and Hall Garth, within the borough (*t*).

(xxii.) *Brecon.*

Brecon.

314. The Brecon Court of Record (*u*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held twice a week before the mayor, aldermen, and town clerk, or any two of them.

The process of the court is by summons and attachment of goods. If the defendant does not appear, judgment goes by default; if he appears, the steps in the action are declaration and bill of particulars, a plea is demanded at the next court and issue joined, and a jury is summoned for the court next following (*x*). The court has been in abeyance for many years.

The corporation also has a court leet (*a*).

(xxiii.) *Bridgnorth.*

Bridgnorth

315. The Bridgnorth Court of Record (*b*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The borough has a recorder, who is consequently judge of the court (*c*). The practice is as in the old Court of King's Bench before 1852 (*d*).

(xxiv.) *Bridgwater.*

Bridgwater Civil Court.

316. The Bridgwater Civil Court or Court of Record (*e*) has jurisdiction in personal actions to any amount. The court is directed to be held every week. The borough has a recorder, who is consequently judge of the court. The practice of the court is similar to that of the old Court of Common Pleas before 1852 (*f*), and rules were made in 1827 and 1832 in conformity with those of the Court of Common Pleas (*g*).

(*q*) See p. 136, *ante*.
(*r*) See p. 137, *ante*.
(*s*) See p. 215, *post*.
(*t*) A charter of Queen Elizabeth (1572-3) granted a court of Admiralty to this corporation (see p. 105, *ante*). Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2151—2156.
(*u*) This court is held under the authority of a charter of Philip and Mary (Pat. Rol., 2 & 3 Phil. & Mar., Part III., granted 3rd May, 1556).
(*x*) Information as to the costs will be found in the Appendix to the Report of the Municipal Corporations Commissioners, 1835, Part I., p. 180.
(*a*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 177—181 ; see p. 215, *post*.
(*b*) This court is held under the authority of a charter of Henry VI. (1425).
(*c*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176.
(*d*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., p. 1781.
(*e*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 35 Car. 2, Part VI., No. 6).
(*f*) Information as to the fees of the court is given in the Appendix to the Report of the Municipal Corporations Commissioners, 1835, Part I., p. 464.
(*g*) *Ibid.*, Part I., pp. 463, 464.

(xxv.) *Bridport.*

Bridport.

317. The Bridport Court of Record (*h*) has jurisdiction in all personal actions up to £20. The court is directed to be held once in three weeks before the mayor (*i*).

The process is by serviceable process, and the subsequent proceedings are as those in the superior courts of common law before 1852.

The court has been in abeyance since 1787. No rules or tables of fees are in existence.

The corporation has a court leet (*j*), held before the mayor, the town clerk acting as clerk of the court (*k*).

(xxvi.) *Bristol.*

Bristol Tolzey Court.

318. The Tolzey Court of Bristol (*l*) has jurisdiction in all mixed and personal actions to any amount. The court also possesses the power of foreign attachment. At the time of the passing of the Municipal Corporations Act, 1835 (*m*), a barrister of five years' standing was judge of the court, and consequently the recorder is not necessarily the judge. At the present time, however, the recorder of Bristol is the judge of the court (*n*).

Court of pie poudre.

The corporation has also a court of pie poudre (*o*), which is held during fourteen days annually. The holding of the Court of Tolzey is suspended during the holding of the Court of Pie Poudre, which court is held as a continuation of the Court of Tolzey.

Procedure.

In 1871 an Order in Council was made applying certain provisions of the Common Law Procedure Acts, 1852 (*p*), 1854 (*q*), and 1860 (*r*), and of the Summary Procedure on Bills of Exchange Act, 1855 (*s*), to the Bristol Courts of Tolzey and Pie Poudre (*t*). In 1873 another

(*h*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 18 Car. 2, Part V., No. 10), granted 15th August, 1666, confirming a charter of 17 Jac. 1 (granted 2nd November, 1619), and increasing the jurisdiction of the court from £10 to £20.

(*i*) Formerly before the bailiffs (of whom there were two) and the deputy recorder, or any two of them.

(*j*) See p. 215, *post*.

(*k*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1139—1143. Information kindly given by the town clerk.

(*l*) This court, which is held under the authority of a charter of Queen Anne (Pat. Rol., 9 Ann., Part V., No. 11), granted 24th July, 1710, was originally that of the bailiffs of the hundred. When Bristol became a royal residence this court became united with that of the Lord Steward of the Household. Richard II. by a charter of the nineteenth year of his reign granted that the Steward, Marshal, and Clerk of the Market of the King's Household should not sit or exercise their office within the town. As to securing attendance of defendant, see *Re Price, Ex parte Sear* (1881), 17 Ch. D. 74, C. A.

(*m*) 5 & 6 Will. 4, c. 76.

(*n*) It must be noted that the three Orders in Council mentioned later direct that the powers of the court or a judge are to be exercised by the recorder of Bristol or his duly appointed deputy. Parliamentary Paper, 1888 (C. 187), lxxxii. 169, states that the recorder is *ex-officio* judge of the court.

(*o*) See p. 136, *ante*.

(*p*) 15 & 16 Vict. c. 76.

(*q*) 17 & 18 Vict. c. 125.

(*r*) 23 & 24 Vict. c. 126.

(*s*) 18 & 19 Vict. c. 67.

(*t*) Order in Council of 16th May, 1871 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 9).

SECT. 5. Particular Courts.

Order in Council (*a*) was made extending the whole of the provisions of the schedule to the Borough and Local Courts of Record Act, 1872 (*b*), to these courts. In 1878, however, rules were made by the then judge and confirmed by three judges of the High Court (*c*). These rules extended, with certain exceptions, all the provisions of the Judicature Acts, 1873 (*d*) and 1875 (*e*), and all rules made or which thereafter should be made thereunder, to the Bristol Courts of Tolzey and Pie Poudre. The effect of this appears to be to leave in force only that part of the Order in Council of 1871 which applied to these courts certain sections of the Common Law Procedure Act, 1852, relating to actions of ejectment (*f*).

In 1883 another Order in Council was made (*g*) applying to these courts certain provisions of an Act of William IV. (*h*) and of the Common Law Procedure Act, 1860 (*i*), relating to interpleader. The Rules of the Supreme Court, however, appear to supersede these provisions except the provision in the Act of 1860 as to the finality of judgments (*k*).

Officers.

The officers of the court are the registrar and two sergeants-at-mace appointed by the corporation. This court is still held (*l*).

Bristol Mayor's Court.

319. A charter of Edward III. (*m*) confirmed to the corporation of Bristol a Mayor's Court, which is presumed to be analogous to the London Mayor's Court (*n*). This court, after a contest for jurisdiction with the Tolzey Court, fell into disuse about the seventeenth century.

Staple Court.

320. There was also a court of the Staple (*o*), which, like the Mayor's Court, was superseded by the Tolzey Court (*p*).

Frankpledge.

A charter of Edward III. recognised that the burgesses of Bristol from time immemorial had enjoyed the view of frankpledge, and confirmed the privilege (*q*).

(*a*) Order in Council of 26th June, 1873 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 11).

(*b*) 35 & 36 Vict. c. 86.

(*c*) Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 14.

(*d*) 36 & 37 Vict. c. 66.

(*e*) 38 & 39 Vict. c. 77.

(*f*) 15 & 16 Vict. c. 76. That is to say, ss. 209—214, 218—220.

(*g*) Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 13.

(*h*) 1 & 2 Will. 4, c. 58.

(*i*) 23 & 24 Vict. c. 126.

(*k*) "The judgment in any such action or issue as may be decided by the court or judge in any interpleader proceedings and the decision of the court or judge in a summary manner shall be final and conclusive against the parties and all persons claiming by, from, or under them" (*ibid.*, s. 17).

(*l*) In 1905 there were 1,899 plaints issued, of which forty-nine came on for trial (Civil Judicial Statistics for 1905, Parliamentary Paper, 1907 [C. 3477], p. 164).

(*m*) 47 Edw. 3, granted 8th August, 1373.

(*n*) See title MAYOR'S COURT, LONDON. By charters of Henry VI. (1445) and Edward IV. (1461) a Court of Admiralty (see p. 105, *ante*) was granted to the corporation of Bristol, but in 1637 they resigned the exclusive power of Admiralty jurisdiction.

(*o*) See p. 137, *ante*.

(*p*) See p. 147, *ante*.

(*q*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1151—1178. See p. 215, *post*.

(xxvii.) *Buckingham.*

Buckingham Three Weeks Court.

321. The Three Weeks Court of Buckingham (*r*) has jurisdiction over all causes of action not exceeding £5. The court is directed to be held from three weeks to three weeks before the mayor, three burgesses, and the steward or his sufficient deputy. The court has been in abeyance since 1818.

The corporation has also a court leet (*s*), held before the mayor (*t*).

(xxviii.) *Bury St. Edmunds.*

Bury St. Edmunds.

322. The Bury St. Edmunds Court of Record (*u*) has jurisdiction over all actions, real, mixed, and personal, up to £200 (*x*). The court is directed to be held weekly, except in Christmas week. The borough has a recorder, who is consequently judge of the court (*a*).

The process of the court is by summons, attachment, and distress, or by any other proceeding which is consistent with the common, statute, or customary law of the country. The court has been in abeyance since 1853. Rules and forms dated 1st December, 1841, and a table of fees dated January, 1839, are in existence (*b*).

Much Court.

There was formerly a court called the Much Court, held before the steward of the liberty, with jurisdiction limited to 40*s*. This court was apparently a court baron, and not of record, and its civil jurisdiction is therefore abolished (*c*). The corporation has also a court of pie poudre (*d*), and a court leet (*e*).

(xxix.) *Cambridge University.*

Chancellor's Court.

323. The University of Cambridge has a Chancellor's Court (*f*), having jurisdiction over personal actions to any amount, as well as criminal jurisdiction over offences against the peace, mayhem and felony excepted, in which a master, scholar, sizar, or common servant of the university should be one party, but, after long disputes with the corporation of Cambridge, the jurisdiction was excluded in all actions and criminal matters in which a person

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(*r*) This court is held under the authority of a charter of Queen Mary (Pat. Rol., 1 Mary, Part III.).

(*s*) See p. 215, *post*.

(*t*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 27—29.

(*u*) This court is held under the authority of a charter of James I., granted 17th September, 1614. This charter is confirmed by Pat. Rol., 20 Car. 2, Part VIII., No. 5.

(*x*) Under the previous charter (Pat. Rol., 6 Jac. 1, Part XI., No. 14), granted 3rd April, 1606, the jurisdiction only extended to £50.

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176.

(*b*) Information kindly given by the town clerk.

(*c*) County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 28. See p. 215, *post*.

(*d*) See p. 136, *ante*.

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2171—2177; see p. 215, *post*.

(*f*) This court was granted by a charter of Queen Elizabeth, dated 26th April, 1651, printed in Dyer's Privileges of the University of Cambridge, Vol. I., pp. 113—131. This was in confirmation of a grant of 7 Ric. II., 10th December.

SECT. 5. Particular Courts.

not a member of the university is a party (*g*) Since then the court has practically fallen into abeyance.

The Chancellor, the Vice-Chancellor of the University, and the Commissary (*h*) are the judges of the court. Causes are to be determined with as little delay as possible, and without the formalities of law.

There are two courts, one for persons who are not *in statu pupillari*, the other for those who are *in statu pupillari*. In the former case the Chancellor or Vice-Chancellor is the judge, in the latter the Chancellor, Vice-Chancellor, and the Commissary.

There is an appeal from the Commissary to the Chancellor or Vice-Chancellor, and from the Chancellor or Vice-Chancellor to the Senate. This latter appeal is heard by five judges elected singly by grace of the Senate (*i*).

(xxx.) *Cambridge.*

Cambridge Court of Pleas.

324. The Cambridge Court of Pleas (*j*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The jurisdiction does not extend to members of the university. The court is directed to be held once in four weeks. The borough has a recorder, who is consequently judge of the court (*k*). The procedure is regulated by the Common Law Procedure Acts, 1852 (*l*) (with the exception of certain sections) and 1854 (*m*), and the rules made under them (*n*). The provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*o*), have also been extended to this court (*p*).

The officers of the court are the town clerk and sergeants-at-mace of the borough (*q*).

(xxxi.) *Canterbury.*

Canterbury Mayor's Court.

325. The Mayor's Court of Canterbury (*r*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The

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(*g*) Cambridge Award Act, 1856 (19 & 20 Vict. c. xvii.), s. 18.

(*h*) The Commissary is an officer appointed by the Chancellor by letters patent.

(*i*) Statutes of the University of Cambridge, Statute A, approved by the Queen in Council 27th February, 1882, chap. viii. Information kindly given by the registrar.

(*j*) This court is held under the authority of a charter of Charles I. (Pat. Rol., 7 Car. 1, Part XII., No. 5).

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*l*) 15 & 16 Vict. c. 76.

(*m*) 17 & 18 Vict. c. 125.

(*n*) Orders in Council of 30th January, 1854, and 28th February, 1855 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, pp. 17, 18).

(*o*) 18 & 19 Vict. c. 67, by Order in Council of 19th October, 1855 (*ibid.*, p. 19).

(*p*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2185—2192.

(*q*) Parliamentary Paper, 1888 (C. 187), lxxxii. 169.

(*r*) This court is held under the authority of a charter of 26 Henry VI. (Rot. Cart., 27-39 Hen. 6, No. 23), granted 22nd August, 1448; confirmed by Rot. Cart., 1 Edw. 4, Part I., No. 8, granted 2nd August, 1461.

recorder of Canterbury is judge of the court (*s*). In 1835 nothing was known of the practice of the court. The last action tried appears to have been one of ejectment in 1792.

Under a charter of Edward IV. the sheriff is to hold a county court monthly, but such courts are now practically obsolete.

Each of the wards of the city has a court leet (*t*), to be held once a year (*u*).

There was an ancient court of the staple at Canterbury (*x*).

(xxxii.) *Cardiff.*

Cardiff.

326. The Cardiff Court of Record (*y*) has jurisdiction in all actions, real, mixed, and personal, to any amount (*z*). The court is directed to be held weekly. The recorder of Cardiff is judge of the court (*a*).

The procedure is by writ of summons returnable at the next court after six days from service. If the defendant does not appear and plead, judgment goes by default; if the defendant appears and pleads, the cause is then at issue, and trial is had at the next court (*b*).

The corporation have also (*c*) a court of pie poudre (*d*).

(xxxiii.) *Carlisle.*

Carlisle.

327. The Mayor and Bailiff's Court of Carlisle (*e*) has jurisdiction over personal actions to any amount. There is a recorder of the city, who is judge of the court (*f*). The court should sit weekly. The procedure is by service of writ of summons followed by declaration and plea. In actions under 40*s*. the proceedings are summary without pleadings (*g*). The town clerk, as registrar, is the officer of the court (*h*).

(*s*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176; see p. 134, *ante*.

(*t*) See p. 215, *post*.

(*u*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 685—700.

(*x*) Statute of the Staple (27 Edw. 3, stat. 2, c. 19), see p. 137, *ante*.

(*y*) This court is held under the authority of a charter of Queen Elizabeth, granted 12th June, 1600.

(*z*) 6 Jac. 1, Pat. Rol., Part XXVIII., No. 26, granted 18th July, 1608.

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176; see p. 134, *ante*.

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 187—191.

(*c*) Selden Society, Vol. XXIII., p. 15.

(*d*) See p. 136, *ante*.

(*e*) This court is held under the authority of a charter of Charles I. (Pat. Rol., 13 Car. 1, Part XXII., No. 8), granted 21st July, 1637.

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176; see p. 134, *ante*.

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1467—1475. As to costs, see *ibid.*, p. 1475.

(*h*) A number of ancient rules of this court are printed in "The Municipal Records of Carlisle," published by the Cumberland and Westmoreland Antiquarian and Archæological Society. Information kindly given by the town clerk.

SECT. 5.

Particular Courts.

(xxxiv.) *Carmarthen.*

Carmarthen Fortnight Court.

328. The Fortnight Court of Carmarthen (*i*) has jurisdiction in all actions, real, mixed, and personal, to any amount. As appears from the name, the court is to be held on every Monday from fifteen days to fifteen days. The recorder of Carmarthen is judge of the court (*j*).

The procedure in actions for the recovery of debts is by assumpsit, or *concessit solvere*, and is similar to that in the superior courts before 1852. The court has been in abeyance since 1846. No rules or tables of fees are known to be in existence.

The charter also granted a court of pie poudre (*k*) to be held before the recorder or town clerk at all fairs and markets, and a court of Admiralty.

There is a court leet (*l*) or view of frankpledge, directed to be held before the mayor, recorder, and peers (*m*).

There was also a Court of the Staple at Carmarthen (*n*).

(xxxv.) *Chester.*

Chester Courts of Portmote, and of Pentice and Passage.

329. The Chester Court of Portmote (*o*) has jurisdiction in all actions, real, mixed, and personal, to any amount. There is a recorder of the city, who is consequently judge of this court and of the Courts of Pentice and Passage (*p*). The court is directed to be held once a fortnight.

Under the same charter the Chester Court of Pentice (*q*) has jurisdiction in personal actions to any amount. The court should be held three times a week before the recorder. The Passage Court (*r*) is a sort of branch of the Pentice Court, held at less frequent intervals, for the attendance of counsel. It has been in abeyance since 1743.

The procedure in these courts is that under the Common Law Procedure Acts, 1852 (*s*), 1854 (*t*), and 1860 (*u*), the provisions of

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(*i*) This court is held under the authority of a charter of George III. (Pat. Rol., 4 Geo. 3, Part V., No. 15), granted 27th July, 1764.

(*j*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176; see p. 134, *ante*.

(*k*) See p. 136, *ante*.

(*l*) See p. 215, *post*.

(*m*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 203—211. As to costs, see *ibid.*, p. 211. Information kindly given by the town clerk.

(*n*) Statute of the Staple (27 Edw. 3, stat. 2, c. 19). See p. 137, *ante*.

(*o*) This court is held under the authority of a charter of Henry VII., granted 6th April, 1506. "Portmote" or "portmanmote" is the court of a borough, a borough mote; see New English Dictionary, *sub voce*.

(*p*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176; see p. 134, *ante*.

(*q*) "Pentice"="penthouse"="appentitium" is a smaller building attached to a main one, an annexe; see New English Dictionary, *sub voce*. "The Pentice at Chester was an ancient building attached to St. Peter's Church, which was taken down about 1806" (Holland, Chester Glossary, *sub voce*).

(*r*) See, as to this name, p. 173, note (*p*), *post*.

(*s*) 15 & 16 Vict. c. 76.

(*t*) 17 & 18 Vict. c. 125.

(*u*) 23 & 24 Vict. c. 126.

which Acts were extended to them in 1870 (*a*). There are also rules made by the recorder, and approved by three judges of the superior courts on the 17th May, 1870, with tables of solicitors' costs and allowances to witnesses (*b*).

A statutory provision (*c*) allows these courts to be held at the castle of Chester (*d*).

The registrar must be a fit person not a member of the council (*e*).

(xxxvi.) *Chichester.*

Chichester.

330. The Court of Record of Chichester (*f*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held weekly. The recorder of Chichester is judge of the court (*g*). The process is serviceable. If the defendant does not appear and plead, judgment goes by default. At the trial any person may appear as advocate.

Bailiff's court.

There is also a bailiff's court of liberty, to be held every alternate week. Nothing is known as to the business of this court or the purpose for which it was intended.

The charter of Henry VII. granted to the corporation a court of pie poudre (*h*), and there is a court leet (*i*), held annually before the town clerk as steward (*k*).

There was a Court of the Staple at Chichester (*l*).

(xxxvii.) *Chipping Norton.*

Chipping Norton.

331. The Chipping Norton Court of Record (*m*) has jurisdiction in personal actions up to £4. The court is directed to be held weekly before the bailiffs or the town clerk or his deputy. The pleadings are in writing. The court has been in abeyance since about 1780.

The corporation has under the same charter a grant of a court of pie poudre (*n*), which has also long been in abeyance.

(*a*) By Order in Council dated 6th July, 1870 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 20).

(*b*) Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, pp. 21—43.

(*c*) Chester Courts Act, 1867 (30 & 31 Vict. c. 36). This provision has been repealed by the Statute Law Revision Act, 1878 (41 & 42 Vict. c. 79). See, however, the terms of that Act.

(*d*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2615—2625. Information kindly given by the town clerk.

(*e*) Parliamentary Paper, 1888 (C. 187), lxxxii. 169.

(*f*) This court is held under the authority of a charter of Henry VII. This charter was surrendered in the first year of James II., and another granted in similar terms as to courts, but the validity of this surrender and regrant is doubtful.

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*h*) See p. 136, *ante*.

(*i*) See p. 215, *post*.

(*k*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 715—723.

(*l*) Statute of the Staple (27 Edw. 3, stat. 2, c. 19). See p. 137, *ante*.

(*m*) This court is held under the authority of a charter of James I. (Pat. Rol., 4 Jac. 1, Part V., f. 10).

(*n*) See p. 136, *ante*.

SECT. 5. Particular Courts.

The charter gives power to hold a court leet (*o*) twice a year, which in 1835 was obsolete, having been superseded by the court leet of the manor (*p*).

(xxxviii.) *Chipping Wycombe or High Wycombe.*

Chipping Wycombe.

332. The Chipping Wycombe Court of Record (*q*) has jurisdiction in personal actions up to £40. The recorder of the borough is judge of the court (*r*). The court has been in abeyance since the end of the seventeenth century.

Under the same charter the corporation has a grant of a court leet (*s*) and view of frankpledge, to be held before the mayor, recorder, and such aldermen as have been mayors. Incidental to this court is a Clerk of the Markets (*t*), who may hold a court for making presentments of false weights etc. (*a*).

The charter also granted a court of pie poudre (*b*).

(xxxix.) *Clitheroe.*

Clitheroe.

333. Under a prescriptive right (*c*) the borough court of Clitheroe has jurisdiction in personal actions to any amount. The court is directed to be held every three weeks before the mayor, with the town clerk as assessor. There is no recorder of Clitheroe (*d*). The process is serviceable, or, in cases where the debt exceeds 40*s*., by attachment of goods on affidavit of the amount of the debt. In the latter case a rule may be obtained for a *venditioni exponas*. If the defendant does not appear and put in bail, the goods are sold, and the plaintiff is paid the sworn amount of his debt (*e*). In 1887 it was stated that a barrister-at-law was judge of the court and a solicitor the registrar (*f*). The court has been in abeyance for about fifty years. No rules or forms have been made subsequent to 1852 (*g*).

(*o*) See p. 215, *post*.

(*p*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 33—35. A copy of the charge to the jury in the court leet and court baron will be found in Ballard's Notes on the History of Chipping Norton, p. 36. Information kindly given by the town clerk.

(*q*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 15 Car. 2, Part IV., No. 49).

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*s*) See p. 136, *post*.

(*t*) See p. 137, *ante*.

(*a*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 41—43.

(*b*) See p. 136, *ante*.

(*c*) Henry de Lacy the second, by an undated charter (*temp.* Edw. 1), granted the burgesses of Clitheroe the liberties and customs which the burgesses of Chester had, and also the pleas of the courts. A charter of 34 Hen. 8 contains an *inspeximus* and confirmation of this charter. Attached to a translation of this charter the corporation has what is alleged to be a transcript of the privileges of Chester, including a court to be held before the mayor for pleas real and personal.

(*d*) There was a recorder of Clitheroe at the time of the passing of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

(*e*) As to costs, see Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., p. 1486.

(*f*) Parliamentary Paper, 1888 (C. 187), lxxxii. 169.

(*g*) Information kindly given by the town clerk.

The corporation has also a court of pie poudre (*h*), and there is a court leet (*i*), held before the town clerk as steward (*k*).

(xl.) *Colchester.*

Colchester Hundred and Foreign Courts.

334. The Colchester Law Hundred and Foreign Courts (*l*) have jurisdiction in all actions, real, mixed, and personal, against free burgesses, and personal actions against foreigners to any amount. There is a recorder of Colchester, who is judge of these courts (*m*). The procedure is regulated by the Common Law Procedure Acts, 1852 (*n*) and 1854 (*o*), and the rules thereunder (*p*). The provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*q*), were also extended to these courts (*r*), which have, however, been in abeyance since 1878. The town clerk is registrar (*s*).

The charter of Henry V. also granted a court of Admiralty (*a*) to the corporation, and there was a court of pie poudre (*b*).

(xli.) *Congleton.*

Congleton.

335. The Congleton Court of Record (*c*) has jurisdiction in personal actions to any amount. The court was formerly held twice a year before the High Steward, who must be a person of "rare and special eminence," or the deputy steward of the borough. The pleadings are in writing. The catchpoll executes process, which issues upon a common affidavit of debt. The officers of the court are a catchpoll (*d*) and crier.

The corporation has also a court of pie poudre (*e*), and a court leet (*f*) to be held by the High Steward or his deputy (*g*).

(*h*) See p. 136, *ante*.
(*i*) See p. 215, *post*.
(*k*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1483—1487,
(*l*) This court is held under the authority of a charter of George III. (Pat. Rol., 3 Geo. 3, Part VII.), granted 9th September, 1763. This charter was a regrant consequent on default in the election of officers. The court was originally granted by Henry V. (Morant, Essex, Vol. I., pp. 83—88).
(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 56), ss. 175, 176. See p. 134, *ante*.
(*n*) 15 & 16 Vict. c. 76.
(*o*) 17 & 18 Vict. c. 125.
(*p*) Orders in Council of 25th November, 1853, and 28th February, 1855 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, pp. 43, 44).
(*q*) 18 & 19 Vict. c. 67.
(*r*) Order in Council of 2nd December, 1857 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 44).
(*s*) Civil Judicial Statistics, 1879.
(*a*) See p. 105, *ante*.
(*b*) Morant, Essex, p. 86. See p. 136, *ante*.
(*c*) This court is held under the authority of a charter of James I. (Pat. Rol., 22 Jac. 1, Part II., No. 1).
(*d*) A catchpoll (*cacepollus*=chase-fowl) is equivalent to a sheriff's officer. See New English Dictionary, Vol. II., p. 187.
(*e*) See p. 136, *ante*.
(*f*) See p. 215, *post*.
(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2649—2653; Parliamentary Paper, 1888 (C. 187), lxxxii. 169.

SECT. 5.

Particular Courts.

(xlii.) *Conway.*

Conway.

336. The Court Baron of Conway (*h*) has jurisdiction in personal actions under £2. The court was held every three weeks before the bailiffs; it has been in abeyance for a long time (*i*).

There is also a court leet (*k*), formerly held before the recorder twice a year, together with a court baron (*l*).

(xliii.) *Coventry.*

Coventry.

337. The Court of the Mayor and Bailiffs of Coventry (*m*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every fortnight before the mayor and bailiffs. The jurisdiction of the court extends over the whole of the former county of the city of Coventry, including besides the city the parishes of Foleshill, Exhall, Anstey, Stoke, Stivichall, the greater part of Sowe, and a small part of Shilton.

The practice of the court is that of the Court of King's Bench before 1852. The costs are regulated by an ancient table of fees. The court has been in abeyance since 1824. A book of rules dated 1585–9 is in existence.

The corporation as lords of the manor have a court leet (*n*) annually. The town clerk presides as deputy of the steward (*o*).

(xliv.) *Dartmouth.*

Dartmouth.

338. The Court of Record of Dartmouth (*p*) has jurisdiction in all actions, real, mixed, and personal, up to any amount. It has also jurisdiction upon the water extending about a mile from the castle and as far as the White Rock, a mile below Totnes. The court is directed to be held weekly before the mayor and bailiffs. There is no recorder of the borough (*q*).

There are no written rules of practice. The process is by summons and attachment. No trial has been held in this court since 1821 (*r*).

(*h*) This court is held under the authority of a charter of Edward VI. This charter is an *inspeximus* and confirmation of a charter of 1 Hen. 8, granted 7th March 1510.

(*i*) Information, kindly given by the town clerk, states that the last record of business is in 1768. Mr. Hogg's report (see note (*l*), *infra*), however, states that ten cases were entered in 1833.

(*k*) See p. 215, *post*.

(*l*) Report upon certain Boroughs by T. J. Hogg, Parliamentary Paper, 1837–8 (686), p. 13.

(*m*) This court is held under the authority of a charter of James I. (Pat. Rol., 19 Jac. 1, Part VI., No. 16), confirming a charter of 18 Edw. 3 (cl. 2), granted 20th January, 1345. The court, by the name of a portmote, was originally granted by Ranulph, Earl of Chester, in the reign of Henry II.

(*n*) See p. 215, *post*.

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1795—1803. Information kindly given by the town clerk.

(*p*) This court is held under the authority of a charter of James I. (Pat. Rol., 2 Jac. 1, Part XII.), granted 3rd August, 1604. The court was first granted by a charter of 5 Edw. 3 (14th April, 1331).

(*q*) There was a recorder of Dartmouth at the time of the passing of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 477– 479.

(xlv.) *Daventry.*

Daventry.

339. The Daventry Court of Record (*a*) has jurisdiction in personal actions above 40*s.* and below £100 (*b*).

The corporation of Daventry, as successors of the prior and convent of Daventry, have a court leet (*c*) and view of frankpledge under a grant of Edward II. (*d*).

(xlvi.) *Deal.*

Deal.

340. The Deal Court of Record (*e*) has jurisdiction in mixed and personal actions up to £100. The court is directed to be held weekly. There is a recorder of Deal, who is consequently judge of the court (*f*).

Rules of practice and a table of fees were in the possession of the corporation in 1835. The process is by way of attachment of goods to compel appearance. No trial has been had since 1808 in this court (*g*).

The corporation under their charter have also a court of pie poudre (*h*).

(xlvii.) *Denbigh.*

Denbigh.

341. The Denbigh Court of Pleas (*i*) has jurisdiction in personal actions to any amount. The court is directed to be held every fortnight before the bailiffs.

The procedure is by writ of summons and distress in default of appearance. There are no written pleadings except in actions on the case (*k*). The costs are as those in the former sheriffs' county courts. The court has long been in abeyance.

The corporation has also a court of pie poudre (*l*).

(xlviii.) *Derby.*

Derby.

342. The Derby Court of Record (*m*) has jurisdiction in all actions, real, mixed, and personal, up to any amount. The court is

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(*a*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol., 18 Eliz., Part VII., f. 11).

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1843—1846.

(*c*) See p. 215, *post*.

(*d*) Merewether and Stephens, History of Boroughs, Vol. II., p. 597.

(*e*) This court is held under the authority of a charter of William III. (Pat. Rol., 11 Will. 3, Part III., No. 9), granted 13th October, 1699.

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 931—935.

(*h*) See p. 136, *ante*.

(*i*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 14 Car. 2, Part VI., No. 8), granted 14th May, 1662.

(*k*) See title ACTION, Vol. I., p. 39.

(*l*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2661—2665. See p. 136, *ante*.

(*m*) This court is held under the authority of a charter of 34 Charles II., granted 5th September, 1682.

SECT. 5. Particular Courts.

directed to be held every fortnight (*n*). The recorder of Derby is judge of the court (*o*), which is still held (*p*).

The Common Law Procedure Acts, 1852 (*q*) and 1854 (*r*), and the rules made under them, have been extended to this court (*s*), as has also been the Summary Procedure on Bills of Exchange Act, 1855 (*t*). Rules were made in 1861 by the then recorder, and confirmed by three judges of the superior courts (*a*), directing the court to be held for trials four times a year, and the registrar's office to be open on every weekday, and making various regulations as to pleadings etc., and fixing tables of solicitors' costs and court fees. Rules under the Debtors Act, 1869 (*b*), were also made 27th December, 1869 (*c*).

(xlix.) *Devizes.*

Devizes.

343. The Devizes Court of Record (*d*) has jurisdiction in all actions, real, mixed, and personal, up to the amount of £40. The court is directed to be held weekly. There is a recorder of the borough, who is judge of the court (*e*).

The procedure and forms of pleading are as in the superior courts of common law before 1852. There are no rules of court in existence. The court has been in abeyance for a long period (*f*).

(l.) *Doncaster.*

Doncaster.

344. The Doncaster Court of Pleas (*g*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held weekly. The recorder of Doncaster is judge of the court (*h*). There is no table of costs in existence, but costs

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(*n*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1849—1851.

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*p*) In 1905 there were 885 plaints issued, only three, however, of which came on for trial (Civil Judicial Statistics for 1905; Parliamentary Paper, 1907 [C. 3477], p. 164). Nine hundred and eighty-six writs of summons were issued in 1907. Information kindly given by the town clerk.

(*q*) 15 & 16 Vict. c. 76.

(*r*) 17 & 18 Vict. c. 125.

(*s*) By Order in Council of 23rd January, 1860 (Statutory Rules and Orders Revised, 1904, Vol. VI., Inferior Court, England, p. 45).

(*t*) 18 & 19 Vict. c. 67, by Order in Council of 23rd January, 1860 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 46).

(*a*) Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, pp. 47—56.

(*b*) 32 & 33 Vict. c. 62.

(*c*) Information kindly given by the town clerk.

(*d*) This court is held under the authority of a charter of Charles I. (Pat. Rol., 16 Car. 1, Part X., No. 2).

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 176, 177. See p. 134, *ante*.

(*f*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1261—1266.

(*g*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 16 Car. 2, Part IX., No. 4).

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

were formerly allowed on the scale charged by a London agent to his country client. The court has been in abeyance for many years.

The charter of Charles II. also granted a court of pie poudre (*i*), and the corporation has a court leet (*j*).

(li.) *Dorchester.*

Dorchester.

345. The Dorchester Court of Record (*k*) has jurisdiction in all actions, real, mixed, and personal, under the amount of £40. The court is directed to be held every three weeks before the mayor, aldermen, and town clerk, or any two of them, of whom the mayor or town clerk must be one. There is no recorder of Dorchester. The procedure is as in the old superior courts of common law before 1852. No table of fees is in existence.

The corporation has also a court leet (*l*), held annually before the mayor (*m*).

(lii.) *Dover.*

Dover.

346. The Court of Record of Dover (*n*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held on the days and times accustomed. There is a recorder of Dover, who is consequently judge of the court (*o*).

In 1833 the practice of the court was not accurately known even by the officers of the court. The charter gives power to draw defendants to plead by summonses, attachments, or distresses (*p*). The court has been in abeyance since about 1801.

The corporation has also the right to hold a hundred court (*q*). This court appears to have once been of great importance, and to have had jurisdiction over all kinds of actions and offences. It had fallen into entire disuse long before 1835 (*r*).

The barons of the Cinque Ports (*s*) have a court leet (*t*) in Dover.

(*i*) See p. 136, *ante*.

(*j*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1493—1502.

(*k*) This court is held under the authority of a charter of Charles I. (Pat. Rol., 5 Car. 1, Part X., No. 1).

(*l*) See p. 215, *post*.

(*m*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1273—1277.

(*n*) This court is held under the authority of the charter of the Cinque Ports of Charles II., granted 23rd December, 1668, printed in Jeake, Charters of the Cinque Ports. This charter contains *inspeximus* and confirmation of previous charters of 1 Eliz. (granted 8th March, 1559) and 43 Eliz. (granted 26th January, 1601). See Jeake, Charters of the Cinque Ports, pp. 135—139.

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*p*) Jeake, Charters of the Cinque Ports, p. 140.

(*q*) See p. 214, *post*.

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 941—948. Information kindly given by the town clerk.

(*s*) See p. 127, *ante*.

(*t*) Jeake, Charters of the Cinque Ports, p. 67.

SECT. 5. Particular Courts.

(liii.) *Droitwich.*

Droitwich.

347. The Droitwich Court of Record (*u*) has jurisdiction in personal actions up to £10. The court is directed to be held weekly before the recorder or bailiffs and the town clerk or his deputy. The court has been in abeyance since 1835. The procedure and pleadings were as in the superior courts of common law before 1852. No rules or tables of fees are to be found (*a*). The corporation has also a court of pie poudre (*b*) and a court leet (*c*).

(liv.) *Evesham.*

Evesham.

348. The Evesham Court of Record (*d*) has jurisdiction in all actions, real, mixed, and personal, up to the amount of £100. The court is directed to be held weekly before the mayor, senior alderman (and recorder). The process is by writ of summons, and the pleadings as at common law before 1852. A table of fees was in existence in 1835. The court has been in abeyance for many years.

The charter also authorises the corporation to hold a court leet and a court of pie poudre (*e*).

(lv.) *Exeter.*

Exeter

349. The corporation of Exeter has a Court of Record (*f*) with jurisdiction in all actions, real, mixed, and personal, to any amount. This court is to be held weekly. It seems that when sitting on the Monday it was called the Mayor's Court, or *curia civitatis*, and when sitting by adjournment on other days of the week it was called the Provost Court (*g*). The latter title is the only one in use at present. There is a recorder of Exeter, who is consequently judge of the court (*h*), which is still held (*i*).

The procedure is regulated by the Common Law Procedure Acts,

(*u*) 22 Jac. 1, Pat. Rol., Part III., No. 6.

(*a*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 47, 48.

(*b*) See p. 136, *ante*.

(*c*) Information kindly given by the town clerk. See p. 215, *post*.

(*d*) 3 Jac. 1, Pat. Rol., Part XV., No. 31, granted 3rd April, 1605.

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 53—55. See p. 136, *ante*.

(*f*) This court is held under a charter of Edward II., granted 12th November, 1320. This charter is confirmed by that of 3 Car. 1, dated 17th December, 1627, which is the governing charter of the corporation and is printed at length in Oliver's History of Exeter, pp. 289—304. Rolls of the *curia civitatis*, however, are in existence dating back to the reign of Edward I., which shows that the grant by Edward II. must have been a regrant of a franchise already possessed by the corporation.

(*g*) Oliver, History of Exeter, p. 307. The Municipal Corporations Commissioners, 1835, reported that the Provost's Court and the Mayor's Court were separate and distinct courts.

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 487—499; Parliamentary Paper, 1887 (C. 187), lxxxii. 169. Ten plaints were issued in 1905, and one cause came on for trial (Civil Judicial Statistics for 1905, Parliamentary Paper, 1907 [C. 3477], p. 164).

1852 (*k*), 1854 (*l*), and 1860 (*m*), the Summary Procedure on Bills of Exchange Act, 1855 (*n*), and the schedule to the Borough and Local Courts of Record Act, 1872 (*o*), with certain variations (*p*).

The officers of the court are the registrar, deputy registrar, and sergeants-at-mace.

There was also an ancient Court of the Staple at Exeter (*q*).

(lvi.) *Eye.*

Eye.

350. The Eye Court of Record (*r*) has jurisdiction in mixed and personal actions to any amount. The court is directed to be held weekly before the bailiffs or one of them. The court has been practically in abeyance since about 1755, but there were isolated proceedings up to 1839.

There is also a court leet (*s*) held twice a year (*t*). A court of pie poudre (*u*) was granted to the corporation (*a*).

(lvii.) *Falmouth.*

Falmouth.

351. The Falmouth Court of Pleas of Record (*b*) has jurisdiction in personal actions up to £66 13*s.* 4*d.* (100 marks). It is directed to be held once every fortnight before the mayor (recorder) and aldermen, or any three of them, of whom the mayor or his deputy must be one. There is no recorder of Falmouth.

No rules of court are in existence. The court has practically been in abeyance since 1783. In 1832 some summonses were issued, but no case came on for trial (*c*).

The jurisdiction of the court of the manor of Penryn Forryn extended over Falmouth (*d*).

(lviii.) *Faversham.*

Faversham Portmote Court.

352. The Portmote Court of Faversham (*e*) had jurisdiction in all actions, real, mixed, and personal, to any amount, but the court

(*k*) 15 & 16 Vict. c. 76.
(*l*) 17 & 18 Vict. c. 125.
(*m*) 23 & 24 Vict. c. 126.
(*n*) 18 & 19 Vict. c. 67.
(*o*) 35 & 36 Vict. c. 86.
(*p*) Certain provisions of the Common Law Procedure Acts, 1852, 1854, and 1860, and of the Bills of Exchange Act, 1855, and the whole of the schedule to the Borough and Local Courts of Record Act, 1872, were extended to this court by Order in Council of 12th May, 1874 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 56).
(*q*) Statute of the Staple (27 Edw. 3, stat. 2, c. 19). See p. 137, *ante.*
(*r*) This court is held under the authority of a charter of William III. (Pat. Rol., 9 Will. 3, Part V., No. 17).
(*s*) See p. 215, *post.*
(*t*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2229, 2230. Information kindly given by the town clerk.
(*u*) See p. 133, *ante.*
(*a*) Selden Society, Vol. XXIII., p. xv. Records of this court exist for the period 1732—1813. *Ibid.*, p. xix.
(*b*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 13 Car. 2, Part XX., No. 8).
(*c*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 501, 502.
(*d*) See under "Penryn," p. 189, *post.*
(*e*) This court is held under the authority of a charter of Henry VIII. (Pat.

SECT. 5. Particular Courts.

has been in abeyance since about 1779 (*f*). There is now no recorder of Faversham (*g*).

There is also under the charter of Henry VIII. a court of pie poudre (*h*), a court leet (*i*) and view of frankpledge, and a court of the Clerk of the Market (*k*), held annually before the mayor, to examine the weights and measures used within the town, of which latter court the town clerk is clerk (*l*).

(lix.) *Folkestone.*

Folkestone.

353. The Folkestone Court of Record (*m*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every fifteen days. There is a recorder of Folkestone, who is judge of the court (*n*). The court is still formally held, but there is no record of any business being done since 1833 (*o*). There is also a court leet (*p*).

(lx.) *Gloucester.*

Gloucester. Tolzey Court.

354. The Gloucester Court of Record, or Tolzey Court (*q*), has jurisdiction in all actions, real, mixed, and personal, to any amount. The recorder of Gloucester is judge of the court (*r*), which in 1833 was stated to have long fallen into entire disuse.

The corporation had a court of pie poudre (*a*), and a court leet (*b*), which dates back as far as Henry VII. at least (*c*).

Rol., 37 Hen. 8, Part XVI.), granted 27th January, 1546, confirmed by charter of 1 Edw. 6, Pat. Rol., Part IV. The Cinque Ports charter of 20 Car. 2, granted 23rd December, 1668, also grants this court of record to the corporation of Faversham. See under "Dover," p. 159, *ante*.

(*f*) On the passing of an Act abolishing arrest on mesne process in inferior courts for sums under £10 (19 Geo. 3, c. 70).

(*g*) There was a recorder of Faversham at the time of the passing of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

(*h*) See p. 136, *ante*.

(*i*) See p. 215, *post*.

(*k*) See p. 137, *ante*.

(*l*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 961—971.

(*m*) This court is held under the authority of a charter of Charles II., granted to the Cinque Ports 23rd December, 1668 (Jeake, Charters of the Cinque Ports, pp. 135—139).

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 981, 982. Information kindly given by the town clerk.

(*p*) See p. 215, *post*.

(*q*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 24 Car. 2, Part III., No. 13). This charter confirms a grant of this franchise by a charter 21 Ric. 2 (1398).

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*a*) See p. 136, *ante*.

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 59—62.

(*c*) Under a charter of 3 Car. I. (1627), confirmed by 24 Car. II. (note (*q*), *supra*) the sheriffs had cognisance of pleas in the Tolzey Court. "Rules and directions for the proceedings in the pleas of the Tolzey Court of the City of Gloucester" are set out at the end of a book of records of the court, dated 1682. Fourteen

(lxi.) *Godmanchester.*

God-manchester.

355. The Godmanchester Court of Pleas (*d*) has jurisdiction in personal actions up to £2. The court is directed to be held before the bailiffs and assistants every three weeks. The procedure is as in the Court of King's Bench before 1852. The cost of a summons is sixpence. In 1835 a table of fees was in existence (*e*).

The corporation has also a court leet (*f*).

(lxii.) *Grantham.*

Grantham.

356. The Grantham Court of Record (*g*) has jurisdiction in personal actions up to the amount of £40. The court is directed to be held weekly. There is a recorder of Grantham, who is consequently judge of the court (*h*). The process is almost exactly similar to that of the Court of Common Pleas before 1852.

The jurisdiction of the court extends over the soke of Grantham, including the parishes or townships of Barkston, Belton, Braseby, Colstesworth, Woolsthorpe, Denton, Stoke Rochford, Easton, Great Gonerby, Harbaxton, Londonthorpe, Great Ponton, and Sapperton.

The court has been in abeyance for many years (*i*).

(lxiii.) *Gravesend.*

Gravesend.

357. The Gravesend Court of Record (*k*) has jurisdiction in all actions, real, mixed, and personal, to any amount. It is directed to be held every three weeks. The recorder of Gravesend is judge of the court (*l*). A table of fees was in existence in 1834 (*m*).

(lxiv.) *Great Grimsby.*

Great Grimsby.

358. The prescriptive Great Grimsby Mayor's Court (*n*) has jurisdiction in all actions against freemen, real, mixed, and personal, to any amount. The Great Grimsby Foreign Court has similar jurisdiction in actions brought against residents who are not freemen. The courts are directed to be held weekly, and there is a

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books of the records of the Tolzey and Pie Poudre Courts from 1616 to 1726 are in the possession of the corporation. Information kindly given by the town clerk.

(*d*) This court is held under the authority of a charter of James II. (Pat. Rol., 2 Jac. 1, Part XVII.).

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2235—2237.

(*f*) See p. 215, *post.*

(*g*) 7 Car. 1, Pat. Rol., Part VI., No. 2.

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante.*

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2241—2244.

(*k*) This court is held under the authority of a charter of Charles I. (Pat. Rol., 7 Car. 1, Part XXXII., No. 1).

(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante.*

(*m*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2865—2867.

(*n*) This court is held under the authority of a charter of James II. (Pat. Rol., 4 Jac. 2, Part IX., No. 4.).

SECT. 5. Particular Courts.

recorder of Great Grimsby, who is judge of the courts (*o*). The pleadings are as in the superior courts of common law before 1852. The courts have been in abeyance for sixty years (*p*).

The corporation has also a court leet (*q*), to be held before the mayor twice a year (*r*).

(lxv.) *Great Yarmouth.*

Great Yarmouth.

359. The borough court of Great Yarmouth (*s*) has jurisdiction in all actions, real, personal, and mixed, to any amount. The court is directed to be held weekly. There is a recorder of Great Yarmouth, who is the judge of the court (*t*). The procedure in the court is that under the Common Law Procedure Acts, 1852 (*a*), 1854 (*b*), and 1860 (*c*), certain provisions of which Acts, and also the rules made under them, have been extended to this court (*d*), as have the whole of the provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*e*), and the schedule to the Borough and Local Courts of Record Act, 1872 (*f*). The court is still held, but no process was issued in 1904 or 1905 (*g*). This court appears to have originally been a court of husting (*h*) on the model of that of London (*i*).

By the ancient custom of the borough a foreign court was to be held before the bailiffs for "speedy expedition and despatch of merchants and other strangers coming into the said burgh." The bailiffs were to have respect to the truth and equity of the case. No writ of error was allowed (*k*).

Under the charter of John the grant of thol—*i.e.* the right of keeping a market—involved the grant of a court of pie poudre (*l*).

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*p*) Information kindly given by the town clerk.

(*q*) See p. 215, *post*.

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2249—2253. For twenty years prior to this report the court had only been held once a year.

(*s*) The court is held under the authority of a charter of Queen Anne (Pat. Rol., 2 Ann., Part II., 2, No. 8). The court was originally granted by a charter of King John (1208 A. D.), which is confirmed by the charter of Anne (Manship, History of Great Yarmouth, Vol. I., p. 61 ; Vol. II., pp. 2, 41).

(*t*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*a*) 15 & 16 Vict. c. 76.

(*b*) 17 & 18 Vict. c. 125.

(*c*) 23 & 24 Vict. c. 126.

(*d*) By Orders in Council of 28th November, 1856 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 59), and 12th May, 1874 *ibid.*, p. 61).

(*e*) 18 & 19 Vict. c. 67, by Order in Council of 28th November, 1856 (*ibid.*, p. 61).

(*f*) 35 & 36 Vict. c. 86, by Order in Council of 12th May, 1874, *ubi supra*.

(*g*) Civil Judicial Statistics, 1888—1905.

(*h*) See p. 176, *post*.

(*i*) See note (*d*), p. 176, *post*, and Manship, History of Great Yarmouth, Vol. II., p. 12.

(*k*) Manship, History of Great Yarmouth, Vol. II., p. 49.

(*l*) See p. 136, *ante*.

Under a charter of James I. (*m*) there is also a court leet (*n*) and view of frankpledge (*o*).

(lxvi.) *Guildford.*

Guildford.

360. The Guildford Court of Record (*p*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every three weeks. There is a recorder of Guildford, who is judge of the court (*q*).

The procedure is that of the old courts of common law. No issue has been tried in the court since the middle of the eighteenth century (*r*).

The mayor, as Clerk of the Markets, has authority to hold a court of Clerk of the Markets (*s*).

A charter of Edward III. (*a*) also granted a court of pie poudre (*b*).

(lxvii.) *Hartlepool.*

Hartlepool.

361. The corporation of Hartlepool (*c*) has a court of pie poudre (*d*), and also a court baron (*e*), with jurisdiction up to 40*s*., which was formerly held twice a year before the recorder. There was also a court leet (*f*), held with the court baron. Neither of these courts appears to have been held since 1843 (*g*).

(lxviii.) *Harwich.*

Harwich.

362. The Harwich Court of Pleas (*h*) has jurisdiction in personal and mixed actions up to £100. The court was directed to be held weekly before the mayor (recorder) and steward or deputy steward. There is no recorder of Harwich. The procedure was as in the

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(*m*) 6 Jac. 1, granted 22nd July, 1608; Manship, History of Great Yarmouth, Vol. II., p. 31.

(*n*) See p. 215, *post.*

(*o*) Under a charter of Queen Elizabeth (Pat. Rol., 1 Eliz., Part VI.), granted 26th May, 1559, the corporation of Great Yarmouth were granted a Court of Admiralty. See p. 105, *ante.*

(*p*) This court is held under the authority of a charter of Henry VII., granted 1st July, 1488. This charter is set out by way of *inspeximus* in a charter of Henry VIII. (Pat. Rol., 11 Hen. 8, memb. 3).

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante.*

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2871—2873. Information kindly given by the town clerk.

(*s*) See p. 137, *ante.*

(*a*) 14 Edw. 3 (Rot. Cart., Part I., No. 1), 14th January, 1341.

(*b*) Manning and Bray, History of Surrey, Vol. I., p. 35. See p. 136, *ante.*

(*c*) This court is held under the authority of a charter of Queen Elizabeth, granted 3rd February, 1593 (Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., p. 1531).

(*d*) See p. 136, *ante.*

(*e*) See p. 216, *post.*

(*f*) See p. 215, *post.*

(*g*) Surtees, Hist. of Durham, Vol. III., pp. 105, 108. Information kindly given by the town clerk.

(*h*) This court is held under the authority of charters of James I. and Charles II. (Pat. Rol., 2 Jac. 1, Part XXV.; Pat. Rol., 17 Car. 2, Part II., No. 6). Under the charter of James I. the limit of jurisdiction was £40.

SECT. 5. Particular Courts.

courts of common law before 1852. The court has been in abeyance since 1824 (*i*). No rules or tables of fees are in existence (*k*).

The corporation has also a grant of a court of Admiralty (*l*), which has not been held since 1791, and a court of pie poudre (*m*).

(lxix.) *Hastings.*

Hastings.

363. The Hastings Court of Record (*n*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held at the accustomed times, that is, every fifteen days. There is a recorder of Hastings, who is judge of the court (*o*), which has been in abeyance since 1854 (*p*).

The corporation has also authority to hold a hundred court (*q*). At this court freemen were summoned and municipal officers chosen. The hundred court also exercised the functions of a general court leet (*r*), and had fallen into abeyance before 1835 (*s*).

(lxx.) *Haverfordwest.*

Intrinsical Court of Haverfordwest.

364. The Intrinsical Court of Haverfordwest (*t*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held "as well from month to month as from fifteen days to fifteen days" before the mayor or his deputy. The procedure is that of the old Court of Common Pleas.

The corporation has also a court of pie poudre (*a*) and had a court of Admiralty (*b*), both to be held before the mayor (*c*).

There was also a hundred court (*d*), held twice a year before the sheriff, for the election of officers and the transaction of the other business of a court leet (*e*).

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2261—2268.

(*k*) Information kindly given by the town clerk.

(*l*) See p. 105, *ante*.

(*m*) See p. 136, *ante*.

(*n*) This court is held under the authority of the charter of the Cinque Ports, granted by Charles II. 23rd December, 1668, printed in Jeake, Charters of the Cinque Ports. See pp. 135—139. This charter contains *inspeximus* and confirmation of 1 Eliz. (granted 8th March, 1559) and 43 Eliz. (granted 26th January, 1601).

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*p*) Information kindly given by the town clerk. In 1800 this court fell into abeyance, but was revived by mandamus in 1822.

(*q*) See p. 214, *post*.

(*r*) See p. 215, *post*.

(*s*) Appendix to Report of Municipal Corporations Commissioners, 1835, Part II., pp. 997—1000.

(*t*) This court is held under the authority of a charter of James I. (Pat. Rol., 7 Jac. 1, Part XXIII., No. 3), granted 20th February, 1620.

(*a*) See p. 136, *ante*.

(*b*) See p. 105, *ante*.

(*c*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 233—239.

(*d*) See p. 214, *post*.

(*e*) Appendix, Part I., p. 239.

(lxxi.) *Hedon.*

Hedon.

365. The Hedon Court of Pleas (*f*) has jurisdiction in personal actions to any amount. The court was directed to be held before the mayor and bailiffs. The procedure was analogous to that of the superior courts of common law before 1852. The court had fallen into abeyance before 1834 (*g*).

(lxxii.) *Helston.*

Helston.

366. The Helston Court of Record (*h*) has jurisdiction in personal actions to any amount. The court is directed to be held every three weeks before the mayor or his deputy, two of the aldermen (and the recorder or his deputy). There is no recorder of Helston (*i*).

The process is by attachment and distress. No rules of the court are in existence, nor any records of the holding of the court.

The mayor, as Clerk of the Market (*k*), holds a court of the Clerk of the Market once a year to inquire into the weights and measures in use in the borough (*l*). The Court of the Hundred (*m*) of Kerrier, held at Penryn (*n*), has jurisdiction within the borough of Helston.

(lxxiii.) *Hereford.*

Hereford.

367. The Mayor's Court of Hereford (*o*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held twice a week. There is a recorder of Hereford, who is consequently judge of the court (*p*).

The practice of the court is that of the superior courts of common law before 1852. No table of costs is in existence. Solicitors have audience in the court.

The court has been in abeyance since about 1846.

The charters also grant a court leet (*q*) and view of frankpledge and a court of pie poudre (*r*).

(*f*) This court is held under the authority of a charter of Queen Elizabeth, granted 1564-5.

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1537—1540.

(*h*) This court is held under the authority of a charter of George III. (Pat. Rol., 14 Geo. 3, Part VI., No. 7), granted 3rd September, 1774.

(*i*) There was a recorder of Helston at the time of the passing of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

(*k*) See p. 137, *ante*.

(*l*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 511—513.

(*m*) See p. 214, *post*.

(*n*) See p. 189, *post*.

(*o*) This court is held under the authority of charters of Queen Elizabeth and of James I. (Pat. Rol., 39 Eliz., Part IX., fo. 23; 17 Jac. 1).

(*p*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*q*) See p. 215, *post*.

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 253—259. See p. 136, *ante*.

SECT. 5. Particular Courts.

(lxxiv.) *Hertford.*

Hertford.

368. The Court of Record of Hertford (*s*) has jurisdiction in personal actions up to £60. The court is directed to be held weekly before the mayor (or the recorder) or their respective deputies. There is no recorder of Hertford. The court fell into abeyance in 1782, was revived in 1827, and again fell into abeyance.

The mayor is entitled to hold a court of the Clerk of the Market (*t*) once a year (*a*).

(lxxv.) *Huntingdon.*

Huntingdon.

369. The Huntingdon Court of Pleas (*b*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every three weeks before the mayor. The procedure is similar to that of the superior courts of common law before 1852. There is no table of fees in existence, but there is a custom to take half the fees allowed in the old Court of King's Bench.

The charter also grants a court leet (*c*) to the corporation (*d*).

(lxxvi.) *Hythe.*

Hythe.

370. The Hythe Court of Record (*e*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held at the accustomed times. There is a recorder of Hythe, who is consequently judge of the court (*f*). The procedure is similar to that in the superior courts of common law before 1852. The court has been in abeyance since 1777, but is still formally held with the borough quarter sessions (*g*). The Barons of the Cinque Ports have a court leet, as in the case of Dover. The charter of Elizabeth also grants a court leet (*h*) and view of frankpledge to the corporation, and there is a court of pie poudre (*i*).

(*s*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 32 Car. 2, Part III., No. 22).

(*t*) See p. 137, *ante*.

(*a*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2885—2888.

(*b*) This court is held under the authority of a charter of Charles I. (Pat. Rol., 6 Car. 1, Part I., No. 2).

(*c*) See p. 215, *post*.

(*d*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2287, 2288.

(*e*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol., 17 Eliz., Part VIII., fo. 16). The franchise seems to have been conferred originally by the Custumal of Hythe, *temp. circa* Ric. III., and also under the authority of the charter granted by Charles II. to the Cinque Ports, 23rd December, 1668, printed in Jeake, Charters of the Cinque Ports. This charter contains *inspeximus* and confirmation of charters of 1 Eliz. (granted 8th March, 1559) and 43 Eliz. (granted 26th January, 1601). See Jeake, pp. 135—139.

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1007, 1008. Information kindly given by the town clerk.

(*h*) See p. 215, *post*.

(*i*) Selden Society, Vol. XXIII., p. xv.

(lxxvii.) *Ipswich.*

Ipswich.

371. The Ipswich Court of Small Pleas (*k*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every fortnight. The recorder of Ipswich is judge of the court (*l*). The jurisdiction of this court has been excluded in all cases in which the county court has jurisdiction (*m*).

The procedure is under the Common Law Procedure Acts, 1852 and 1854, the whole of which Acts, and the rules under them, have been applied to this court (*n*).

No proceedings appear to have been had in this court since 1873 (*o*), but the court is held if there is any business to be done (*p*).

Bailiffs' Court.

There are also (1) a court called the Petty Court of the Bailiffs for passing the real estate of a minor situated within the borough; (2) a court of Portman's Mote for fines and recoveries and acknowledgments of married women, and (3) a court leet (*q*), but since 1793 (*r*) this court has fallen into abeyance (*s*).

Portman's Mote.

(lxxviii.) *Kingston-upon-Hull.*

Kingston-upon-Hull.

372. The civil court of Kingston-upon-Hull, called the Court of Venire (*a*), has jurisdiction in all actions, real, mixed, and personal, to any amount. The court days are directed to be every fortnight, except for six weeks preceding the quarterly sittings of the court for the trial of actions, when they are to be weekly. The recorder is judge of the court (*b*).

The procedure of the court is regulated by the Common Law Procedure Acts, 1852 (*c*), 1854 (*d*), and 1860 (*e*), certain provisions of these Acts having been applied to this court, as have the whole

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(*k*) This court is held under the authority of charters of Edward IV. and Charles II. (Rot. Cart., 3 Edw. 4, 23 & 24 Edw. 4, No. 4; Pat. Rol., 17 Car. 2, Part VI., No. 2). The court was originally granted by a charter of 1 John, printed in Rot. Cart., Vol. I., p. 65 b.

(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*m*) By Order in Council of 5th June, 1858 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 76).

(*n*) By Order in Council of 5th June, 1858 (*ibid.*, p. 75).

(*o*) Parliamentary Paper, 1888, (C. 187) lxxxii., 169.

(*p*) Information kindly given by the town clerk.

(*q*) See p. 215, *post*.

(*r*) On the passing of a Paving Act (33 Geo. 3, c. xcii.) which gave powers to commissioners to deal with nuisances.

(*s*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2293—2317. Under charters of Henry VIII. the corporation of Ipswich has a grant of a Court of Admiralty (Pat. Rol., 10 Hen. 8 and 13 Hen. 8). The boundaries of the jurisdiction of this court are from the Platters and (north-east of Landguard Fort) south-eastward to the west side of the Cork sand, thence in a straight line to the Naze, along the coast by the town of Harwich, and up the river to Ipswich, and no farther. See p. 105, *ante*.

(*a*) This court is held under the authority of 18 Hen. 6, charters of Rot. Cart., No. 29, Henry VII. and Charles II.; Pat. Rol., 13 Car. 2, Part XXIII., No. 22.

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*c*) 15 & 16 Vict. c. 76.

(*d*) 17 & 18 Vict. c. 125

(*e*) 23 & 24 Vict. c. 126.

SECT. 5. Particular Courts.

of the provisions in the schedule to the Borough and Local Courts of Record Act, 1872 (*f*), and the provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*g*). Rules were also made between 1852 and 1857 by the then recorder, and confirmed by three judges of the superior courts of common law, as to pleadings etc. (*h*). The court is still held (*i*).

There is also a court of pie poudre (*k*). By a charter of Henry VI. (*l*) the mayor and aldermen are entitled to choose from among themselves an admiral of the Humber (*m*).

(lxxix.) *Kingston-on-Thames.*

Kingston-on-Thames.

373. The Court of Record of Kingston-on-Thames (*n*) has jurisdiction in all personal and mixed actions to any amount. The court is directed to be held weekly before the bailiffs and the recorder and the steward of the court, or two of them. There is a recorder of Kingston, who is consequently judge of the court (*o*). The office of the steward of the court was held *ex officio* by the Attorney-General, but there is no record of his ever having attended. The jurisdiction of the court extends over Kingston, Elmbridge, Copthorne, and Effingham hundreds. The process is by summons. The costs are stated to be moderate, the average expense of a trial and final process not exceeding £10. The court has been in abeyance since the introduction of county courts in 1846.

The corporation has a court leet (*p*) and view of frankpledge, with jurisdiction formerly extending over the whole hundred of Kingston, but in 1629 (*q*) the corporation released to the Crown that part of the jurisdiction which was within the manor of Richmond and the hamlets of Richmond and Kew and Petersham, and the manor of Ham, appurtenant to the manor of Richmond (*r*).

(*f*) 35 & 36 Vict. c. 86, by Order in Council of 26th June, 1873 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 78).

(*g*) 18 & 19 Vict. c. 57, by Order in Council of 21st November, 1855 (*ibid.*, p. 77).

(*h*) 10th November, 1852; 7th November, 1853; 23rd January, 1857 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, pp. 80—85). R. 23 of these rules runs as follows: "That in all other respects the practice and pleading of this court shall be conformable to and as much as may be regulated by the town practice and pleading in the superior courts of common law at Westminster, whether such practice or pleading be regulated from time to time by Act of Parliament, rules of court, or otherwise."

(*i*) Eighty-three plaints were issued in 1905 (Parliamentary Paper, 1907 [C. 3477], p. 164).

(*k*) See p. 136, *ante*.

(*l*) 26 Hen. 6.

(*m*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1545—1556, and information kindly given by the town clerk.

(*n*) The court is held under the authority of a charter of James I. (Pat. Rol., 1 Jac. 1, Part VI.), granted 17th November, 1603.

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*p*) See p. 215, *post*.

(*q*) In consideration of a charter extending the jurisdiction of the Court of Record over the hundreds of Copthorne and Effingham 4 Car. 1, 13th December, 1629.

(*r*) The corporation has also a court baron. See p. 216, *post*.

The Hundred Court of Kingston is a court of ancient demesne (*s*), The latest entries in its records are a recovery suffered 1 Jac. I. and a fine levied 6 Jac. I.

There is also a court of pie poudre (*t*).

(lxxx.) *Kirkby-in-Kendal.*

Kirkby-in-Kendal.

374. The civil court of Kirkby-in-Kendal (*a*) has jurisdiction in personal actions from 40*s.* to £40. The court is directed to be held every three weeks before the mayor and the two senior aldermen. The court has been in abeyance since about 1835 (*b*).

(lxxxi.) *Lancaster.*

Lancaster.

375. The Court of Pleas of the Borough of Lancaster (*c*) has jurisdiction in personal actions to any amount. The court is directed to be held every week before the mayor. The process is either by service, caption of the person (bailable), or attachment of the goods. The town clerk is appointed registrar of the court. No rules or tables of fees are in existence. The court has been in abeyance for many years (*e*). There is also a court of pie poudre, held before the mayor (*f*).

(lxxxii.) *Launceston.*

Launceston.

376. The Launceston Court of Record (*g*) has jurisdiction in personal actions to any amount. The court is directed to be held every week before the mayor and aldermen. The court has fallen into abeyance since 1835 (*h*).

(lxxxiii.) *Leicester.*

Leicester.

377. The Leicester Court of Record (*i*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held weekly or oftener if necessary. There is a recorder of Leicester, who is consequently judge of the

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(*s*) See p. 217, *post.*

(*t*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2892—2900. See p. 136, *ante.*

(*a*) This court is held under the authority of a charter of 36 Charles II.

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1589—1592. Information kindly given by the town clerk.

(*c*) This court is held under the authority of a charter of George III. (Pat. Rol., 59 Geo. 3, Part XII., No. 2). Information kindly given by the town clerk.

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1597—1607; information as to costs will be found at p. 1607.

(*f*) See p. 136, *ante.*

(*g*) This court is held under the authority of a charter of Philip and Mary (Pat. Rol., 2 & 3 Phil. & Mar., Part VII.), granted 15th February, 1556.

(*h*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 517, 519. Information as to costs will be found on p. 519. Information kindly given by the town clerk.

(*i*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol., 41 Eliz., Part I., f. 1), granted 1st June, 1599. This charter is printed at length in Nichols' Leicestershire, Vol. I., Part II., pp. 409—415.

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court (*k*). The procedure is the same as that of the Court of King's Bench before 1852. The court has been in abeyance since about 1836 (*l*). The charter of Queen Elizabeth also grants a court leet (*m*) and view of frankpledge, to be held twice a year before the mayor etc. (*n*). The corporation have also (*o*) a court of pie poudre (*p*).

(lxxxiv.) *Leominster.*

Leominster.

378. The Leominster Court of Record (*q*) has jurisdiction in personal actions up to £100. The court is directed to be held every other week before the mayor and burgesses. The procedure is similar to that of the superior courts of common law before 1852. No rules or tables of fees are in existence. The court has been in abeyance since about 1846.

There is also a court of pie poudre (*r*), held before the mayor (*s*)

(lxxxv.) *Lichfield.*

Lichfield.

379. The Lichfield Court of Record (*t*) has jurisdiction in all actions, real, mixed, and personal, from 40*s.* to any amount. The court is directed to be held weekly. The recorder of Lichfield is judge of the court (*a*). The procedure and pleadings are similar to those in the superior courts of common law before 1852, and the costs about one-third of those of the superior courts. The court has been in abeyance since the establishment of county courts in 1846 (*b*).

(lxxxvi.) *Lincoln.*

Lincoln Court for Foreigners.

380. The Borough Mote Court and the Court for Foreigners of Lincoln (*c*) have jurisdiction in all actions, real, mixed, and personal, to any amount. The two courts became amalgamated under the title of the Lincoln Court for Foreigners. There is a recorder of

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(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176 ; see p. 134, *ante.*

(*l*) Information kindly given by the town clerk.

(*m*) See p. 215, *post.*

(*n*) Appendix to Report of the Municipal Corporations Commissioners, Part III., pp. 1885—1897.

(*o*) Selden Society, Vol. XXIII., p. xv.

(*p*) See p. 136, *ante.*

(*q*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 17 Car. 2, Part V., No. 9), granted 6th June, 1666. Under the charter 1 Mar. (Pat. Rol., Part XV.), granted 28th May, 1554, the court was originally granted with jurisdiction limited to £5.

(*r*) See p. 136, *ante.*

(*s*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 293—296 ; and information kindly given by the town clerk.

(*t*) This court is held under the authority of charters of James I. and Charles II. (Pat. Rol. 21 Jac. 1, Part I., No. 8; Pat. Rol., 16 Car. 2, Part XX., No. 1).

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176; see p. 134, *ante.*

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1925—1928; and information kindly given by the town clerk.

(*c*) These courts are held under the authority of a charter of Charles I. (Pat. Rol., 4 Car. 1, Part XLI., No. 1), granted 18th December, 1628.

the city of Lincoln, but in 1835 the judge of the court was a barrister of five years' standing, and consequently the recorder is not *ex officio* the judge of the court (*d*). The court has been in abeyance for about a hundred years. This court appears to have originally been a court of husting, modelled on that of London (*e*).

There is also a court leet (*f*), to be held twice a year before the judge of the court of record (*g*).

This was an ancient Court of the Staple at Lincoln (*h*).

(lxxxvii.) *Liskeard.*

381. The Liskeard Court of Record (*i*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held before the mayor or his deputy, two capital burgesses (councillors), and before the chief steward (town clerk) if he be present. There are no rules of the court or tables of fees in existence, and the procedure is unknown. The court has been in abeyance for nearly a century. Liskeard.

There is also a court leet (*k*) and view of frankpledge, to be held twice a year before the mayor or his deputy and two capital burgesses (councillors) (*l*), and a court of pie poudre (*m*), which has also long been disused (*n*).

(lxxxviii.) *Liverpool.*

382. The Liverpool (*o*) Court of Passage (*p*) has jurisdiction in personal actions to any amount where the defendant or one of the defendants resides or carries on business within the jurisdiction of the court, or, by leave of the judge or registrar, when the whole or part of the cause of action arises within such jurisdiction, provided that, except where the whole cause of action arises within the Liverpool Court of Passage.

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176; see p. 134, *ante*.

(*e*) See note (*d*), p. 176, *post*.

(*f*) See p. 215, *post*.

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2345—2355.

(*h*) Statute of the Staple (27 Edw. 3, stat. 2, c. 19), see p. 137, *ante*.

(*i*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol., 29 Eliz., Part XIII., f. 32), granted 26th July, 1587.

(*k*) See p. 215, *post*.

(*l*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 525—527.

(*m*) See p. 136, *ante*.

(*n*) The court leet and the court of pie poudre are both held under the authority of the charter of Queen Elizabeth.

(*o*) A charter of Henry III. (Rot. Chart., 13 Hen. 3, Part I., memb. 9), granted 24th March, 1229, contained a grant to the burgesses of Liverpool of the franchise of "sac and soc," the word sac meaning a free court.

(*p*) This court was granted by charters of Charles I. and William III. (Pat. Rol., 2 Car. 1, Part XV., No. 8), granted 4th July, 1626, 7 Will. 3, granted 26th September, 1695. The name seems to be derived from the fact that the court was originally intended for causes arising out of the imports and exports passing through (Encyclopædia Britannica, Vol. XIV., p. 714). Up to 1853 all proceedings were entitled "in the borough court of Liverpool." Information kindly given by the registrar.

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jurisdiction, no action under £20, in which the county court has jurisdiction, shall be commenced in this court (*q*). The court also has jurisdiction to try all actions of ejectment between landlord and tenant wherein the annual rent of the premises in question does not exceed £100, and where no fine is reserved or made payable (*r*).

This court, which is still in full operation (*s*), is regulated by certain local and personal Acts (*t*), and also by two public and general Acts (*a*). The local Act of 1834 provided for the appointment by the corporation of an assistant barrister of seven years' standing. In 1893 the title of this judicial officer was changed to the "Presiding Judge of the Court of Passage" (*b*), with the same power, jurisdiction, and authority in regard to causes in the Court of Passage (subject to rules of court) as is possessed by a judge of the High Court sitting in chambers or at nisi prius.

In case of the death, sickness, or unavoidable absence of the presiding judge, the recorder of Liverpool may act in lieu of him (*c*).

Rules and procedure.

383. The presiding judge has power, with the concurrence of the authority for the time being empowered to make rules for the Supreme Court, to adopt and apply to the Court of Passage any or all of the Rules of the Supreme Court, with such modifications, if any, as may be thought fit. Such rules are not to be invalid by reason of extending or otherwise affecting the jurisdiction of the Court of Passage (*d*). Rules were made and confirmed under this power in 1903 and 1909 (*e*).

These rules practically assimilate the procedure of the court to that of the King's Bench and Admiralty Divisions of the High Court (*f*), except that summary judgment under Ord. 14 cannot be obtained against a defendant who is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a

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(*q*) Liverpool Court of Passage Act, 1893 (56 & 57 Vict. c. 37), s. 2.

(*r*) Liverpool Court of Passage Procedure Act, 1853 (16 Vict. c. xxi.), s. 48. As to the Admiralty jurisdiction of the Court of Passage, see title ADMIRALTY, Vol. I., p. 140.

(*s*) Three thousand three hundred and twenty-five plaints were issued in 1905, of which a hundred and nineteen came on for trial (Civil Judicial Statistics, 1905, Parliamentary Paper, 1907 [C. 3477], p. 164).

(*t*) 4 & 5 Will. 4, c. xcii.; 6 & 7 Will. 4, c. cxxxv.; 7 Will. 4 & 1 Vict. c. xcviii.; 1 & 2 Vict. c. xcix.; 5 & 6 Vict. c. lii.; Liverpool Court of Passage Procedure Act, 1853 (16 Vict. c. xxi.); Liverpool Corporation Act, 1880 (43 & 44 Vict. c. xxviii.), s. 4; and Liverpool Improvement Act, 1886 (49 & 50 Vict. c. lxxx.), ss. 29, 30.

(*a*) Liverpool Court of Passage Act, 1893 (56 & 57 Vict. c. 37); Liverpool Court of Passage Act, 1896 (59 & 60 Vict. c. 21).

(*b*) Liverpool Court of Passage Act, 1893 (56 & 57 Vict. c. 37), s. 6.

(*c*) 4 & 5 Will. 4, c. xcii., s. 2.

(*d*) Liverpool Court of Passage Act, 1893 (56 & 57 Vict. c. 37), s. 8. As to the power to make rules, see *R.* v. *Liverpool Corporation* (1887), 18 Q. B. D. 510.

(*e*) The 1903 Rules are published by the corporation of Liverpool, price 10*s.* 6*d.* For the 1909 Rules see [1909] W. N., Pt. II., 123

(*f*) The following is a list of the Rules of the Supreme Court, reproduced in the Rules of the Liverpool Court of Passage: Ord. 1, r. 1; Ord. 2, rr. 1—3, 7, 8; Ord. 3, rr. 1—4, 6, 7; Ord. 4, rr. 1, 2; Ord. 5, rr. 3, 10—13, 16, 17; Ord. 6, r. 1; Ord. 7, rr. 1, 3; Ord. 8; Ord. 9, rr. 1—5, 8—15; Ord. 10, Ord. 11 (adapted); Ord. 12, rr. 8—14, 17—22, 24—30; Ord. 13, rr. 1—10, 12—14; Ord. 14; Ord. 16, rr. 1—9, 11—13, 16—31, 48—55; Ord. 17; Ord. 18; Ord. 18A;

handicraftsman, a miner, or any person engaged in manual labour (*g*). The rules also contain tables of court fees and of solicitors' costs (*h*), and a scale of allowances to witnesses.

Removal of actions.

384. Actions or matters may be removed from the Court of Passage by writ of *certiorari* or otherwise, if the High Court or a judge thereof deem it desirable, upon such terms as to payment of costs, giving security, or otherwise as the High Court or a judge thereof think fit to impose (*i*). There is a power to remit actions of tort (*j*) commenced in the High Court to the Court of Passage when the plaintiff has no visible means of paying the defendant's costs, and the plaintiff fails to give security for such costs, or to satisfy a judge of the High Court that his action is fit to be prosecuted in the High Court.

Actions of contract commenced in the High Court where the amount in dispute does not exceed £100 may be remitted to the Court of Passage in a similar manner as it might have been remitted to the county court (*k*). Actions of contract commenced in the Court of Passage where the amount in dispute is less than £10 may be similarly transferred to the county court (*l*). An appeal upon any issue tried in the Court of Passage is allowed under the same circumstances and rules as in the case of a trial at nisi prius (*m*).

Officers.

385. There are a registrar and a deputy registrar of the court, who must be either practising barristers or practising solicitors of

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Ord. 19; Ord. 20, rr. 1, 3, 4, 6, 7; Ord. 21, rr. 1—7, 9—21; Ord. 22, rr. 1—9, 11, 13—16, 20—22; Ord. 23; Ord. 24; Ord. 25, rr. 1—4; Ord. 26; Ord. 27, rr. 1—9, 11—15; Ord. 28; Ord. 29, rr. 1—8, 10—12, 14—18; Ord. 30; Ord. 31; Ord. 32; Ord. 33, r. 1; Ord. 34, rr. 1—7, 9—12; Ord. 35, r. 8; Ord. 36, rr. 2, 4—8, 11—19, 22B, 28, 30—34, 36—40, 42, 43, 56—58; Ord. 37, rr. 1—35; Ord. 38, rr. 1—19, 21—24; Ord. 39; Ord. 40, rr. 1—9; Ord. 41, rr. 1, 3—10; Ord. 42, rr. 1, 2, 5—9, 11—24, 26—34; Ord. 43, rr. 1—4, 8—13; Ord. 44; Ord. 45; Ord. 47; Ord. 48; Ord. 48A, rr. 1—10; Ord. 49, r. 8; Ord. 50, rr. 1—8, 11, 12; Ord. 51, rr. 14—16; Ord. 52, rr. 1—11, 13, 14, 23; Ord. 53; Ord. 54, rr. 1—12, 20, 22, 26—29; Ord. 56; Ord. 57, rr. 1—13, 15—17; Ord. 59, r. 3; Ord. 61, rr. 6, 7, 16, 20; Ord. 64; Ord. 65, rr. 1, 2, 5—7, 11, 13—17, 23, 27 (in part); Ord. 66, rr. 1, 2, 4, and 7 (in part), 8, 9; Ord. 67, rr. 1—7, 9—14; Ord. 70; Ord. 71 (adapted); Ord. 72, r. 2.

(*g*) Liverpool Court of Passage Rules, 1909, Ord. 14, r. 9.

(*h*) There are three scales of fees and costs: higher scale where the amount recovered exceeds £50; middle scale where in contract the amount recovered is not less than £20, and in tort than £10; lower scale where the amount recovered is less. The higher scale is based on the lower scale of the High Court, and the middle and lower on the county court scales, B and A.

(*i*) Liverpool Court of Passage Act, 1893 (56 & 57 Vict. c. 37), s. 5. The defendant's common law right to remove an action by *certiorari* has not been taken away (*Edwards* v. *Liverpool Corporation* (1902), 86 L. T. 627).

(*j*) *Ibid.*, s. 4.

(*k*) *Ibid.*, s. 3; see also title COUNTY COURTS, Vol. VIII., p. 438.

(*l*) Liverpool Court of Passage Act, 1896 (59 & 60 Vict. c. 21), s. 4.

(*m*) Liverpool Court of Passage Act, 1893 (56 & 57 Vict. c. 37), s. 10. An application lies to the Court of Appeal for a new trial of an interpleader issue or any other issue under this section (*Coates* v. *Moore*, [1903] 2 K. B. 140, C. A.). The judge of the Court of Passage can give leave to appeal in any case in which a judge at chambers has power to do so (*Hunter* v. *Jacobsen* (1899), 80 L. T. 641, C. A.). An appeal on an application for a new trial is to the Court of Appeal (*Anderson* v. *Dean*, [1894] 2 Q. B. 222, C. A. As to procedure in appeal, see *Bridge* v. *Daine* (1873), 29 L. T. 477.

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five years' standing. They are appointed by, and hold their office during the pleasure of, the city council (*n*). They have the powers (subject to rules of court) of a registrar, district registrar, master, taxing officer, and associate of the High Court (*o*). There is an appeal from all orders, decisions, and directions of the registrar and the presiding judge (*p*).

The officer of the court is the Sergeant-at-mace (*q*).

Admiralty jurisdiction.

386. In 1869 Admiralty jurisdiction was conferred on the county court of Lancashire holden at Liverpool (*r*), and consequently the Court of Passage acquired Admiralty jurisdiction to the like extent (*s*). The practice and procedure are regulated by the Rules of 1903 before referred to, and are similar to those of the High Court.

Court leet.

387. The corporation of Liverpool have also a court leet (*t*) and view of frankpledge under their charter.

(lxxxix.) *Llandovery.*

Llandovery.

388. The Bailiff's Court of Llandovery (*u*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held monthly before the bailiff (now the mayor). Nothing is known of the practice and procedure of this court, which had fallen into abeyance long before 1834, and no rules or tables of fees are in existence (*a*).

(xc.) *London.*

City of London.

389. The courts of the city of London are (1) the Court of Husting; (2) the Mayor's Court (*b*); (3) the court of equity before the Lord Mayor; (4) the City of London Court (*c*); (5) the sheriffs' courts; (6) the Court of Quarter Sessions for the City of London; (7) the Court of the Chamberlain; (8) courts leet and views of frankpledge.

Court of Husting.

390. The Court of Husting (*d*) is the highest and most ancient court in the city of London (*e*). The jurisdiction of this court

(*n*) Liverpool Improvement Act, 1886 (49 & 50 Vict. c. lxxx.), s. 29.
(*o*) Liverpool Court of Passage Act, 1893 (56 & 57 Vict. c. 37), s. 7.
(*p*) *Ibid.*, s. 9.
(*q*) See Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2689—2713. Information kindly given by the registrar.
(*r*) By Order in Council of 14th January, 1869, now repealed and consolidated by the County Courts (Admiralty Jurisdiction) Order in Council, 1899.
(*s*) County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 25. See also title ADMIRALTY, Vol. I., p. 140.
(*t*) See p. 215, *post*.
(*u*) This court is held under the authority of a charter of Richard III. (Rot. Chart., 2 Ric. 3, Part I., memb. 4), granted 26th January, 1485; confirmed by charters of 22 Hen. 8, granted 5th April, 1531 and 32 Eliz., granted 10th July, 1590.
(*a*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 301—303. Information kindly given by the town clerk.
(*b*) For this court see title MAYOR'S COURT, LONDON.
(*c*) See title COUNTY COURTS, Vol. VIII., p. 412.
(*d*) "Husting" = "house and thing," and thus signifies a "thing" (from *tinga*, to speak) or court held in a house. Courts of husting also were granted to Lincoln, Norwich, Oxford, Winchester, Great Yarmouth, and York.
(*e*) 2 Co. Inst. 321, cited *per* WILLES, J., in *London Corporation* v. *Cox* (1867), L. R. 2 H. L. 239, at p. 256.

originally extended over all actions real, mixed, and personal, to any amount, but the extent of the business in time (*f*) caused the erection of the separate jurisdictions of the Mayor's Court and the sheriffs' courts for personal actions and ejectments, while the jurisdiction of the Court of Husting was restricted to real and mixed actions (with the exception of ejectments), and to the action of replevin.

The court was then divided into two divisions, the Court of Husting for Pleas of Land (*g*) and the Court of Husting for Common Pleas, which were directed to be held in alternate weeks. The recorder is the actual judge of the court, although, as in the case of the Mayor's Court (*h*), the lord mayor (or in his absence an alderman who has passed the chair) and sheriffs are technically the judges of the court.

Wills and deeds may also be enrolled in this court, but of late years very few have been so enrolled. The rolls of pleas of land commence 1273 and end 1724, while those of common pleas commence in 1272 and end 1506 (*i*).

Sheriffs' courts.

391. The two ancient sheriffs' courts for the Poultry Compter and for the Giltspur Street Compter have never been formally abolished (*k*), and in 1901 the Court of Common Council appointed the existing judges of the City of London Court to be respectively judges of the Poultry and of the Giltspur Street Compters.

Court of equity.

392. The court of equity held before the Lord Mayor was a species of court of review of the sheriffs' courts. A defendant after judgment might enter into recognisances to pay the debt or damages in case of affirmance, and to abide by such order as the Lord Mayor should make. The judge of the sheriffs' court attended with the record and his notes together with the recorder and the City Solicitor. After argument the Lord Mayor has authority to order that the plaintiff be debarred from recovering the debt or damages, or that the debt or damages shall be abridged, *i.e.*, reduced, or that the defendant shall have time on giving security for payment, or that the judgment shall be suspended to allow the defendant to file a bill in equity for an injunction, or he may decline to interfere (*l*).

Quarter sessions.

393. The Court of Quarter Sessions for the City of London is held (*m*), before the Lord Mayor, the aldermen, and the

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(*f*) Apparently about the thirteenth century.

(*g*) This court was last held on 2nd June, 1908, to enrol a deed.

(*h*) See title MAYOR'S COURT, LONDON. In the absence of the Lord Mayor the Court of Husting could be held by six aldermen (*Markwick* v. *London* (1707), 2 Bro. Parl. Cas. 409).

(*i*) Sharpe, Calendar of Wills, Court of Husting, London, Vol. I., Introduction, pp. xix., xx.; Pulling, Laws, Customs, and Regulations of London, p. 170; Appendix to Report of the Municipal Corporations Commissioners (London and Southwark), Parliamentary Paper, 1837 (60), p. 123.

(*k*) Cohen, The Law and the City, p. 18.

(*l*) 4 Co. Inst. 248. This court has fallen into disuse.

(*m*) Under the authority of charters of Edward IV., James I., and Charles I.

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recorder, of whom the Lord Mayor or an alderman who has passed the chair, or the recorder, and at least three other aldermen must be present. Since 1851 (*n*) this court has the same powers to try criminal offences as other quarter sessions (*o*), but as the Central Criminal Court has concurrent jurisdiction in the case of offences occurring in the City, such offences are, as a matter of convenience, tried at the Central Criminal Court (*p*). Appeals, however, from courts of summary jurisdiction are heard at the City Quarter Sessions. The Court of Quarter Sessions has in addition jurisdiction as to—(1) estreats; (2) examining and allowing the accounts of the City of London Trophy Tax, as a preliminary to the issue of a warrant for the raising of the tax (*q*); (3) expenses in cases dismissed and other small matters; (4) the assessment of compensation for lands taken under Michael Angelo Taylor's Act (*r*); (5) business with regard to forfeited recognisances; (6) poor law and rating appeals.

Chamberlain's court.

394. The Chamberlain of the City of London has also a court (*s*), which existed in the time of Edward VI., for hearing and determining differences and disputes between apprentices and their masters. The judges of the court are the Chamberlain and the Controller of the Chamber (who is the Vice-Chamberlain). Summonses are granted for a fee of 1*s*. Counsel and solicitors have audience as the "friends" of the parties. An appeal lies to the recorder and a jury in the Mayor's Court (*t*).

Ward-motes.

395. In each of the twenty-six wards of the City of London there is a ward-mote, held annually on St. Thomas's Day, which is equivalent to a court leet and view of frankpledge (*a*).

Courts leet.

396. There is also a court leet and court baron for the manor of Finsbury, held yearly before the steward of the manor, and another for the manor of Duke's Place, held before the Lord Mayor as steward of that manor.

(Rot. Cart., 1 Edw. 4; 2, 3 & 4 Edw. 4, No. 10, granted 9th November, 1462; 6 Jac. 1, granted 24th September, 1608; 1 Car. 16, granted 18th October, 1638); Maitland, History of London, Vol. I., pp. 290, 308.

(*n*) Criminal Justice Administration Act, 1851 (14 & 15 Vict. c. 55), s. 13, which repealed s. 17 of the Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36).

(*o*) See p. 82, *ante*.

(*p*) See p. 87, *ante*.

(*q*) Militia (City of London) Act, 1820 (1 Geo. 4, c. 100). The tax is raised under 13 & 14 Car. 2, c. 3, s. 27.

(*r*) 57 Geo. 3, c. xxix.

(*s*) The jurisdiction of this court has been upheld on proceedings on mandamus (Royal Commission, 1893, Statement as to the Origin of the Position, Powers, Duties and Finance of the Corporation of London), and is expressly preserved by the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 13.

(*t*) See Royal Commission, 1893, Statement as to the Origin of the Position, Powers, Duties and Finance of the Corporation of London, and Appendix to Report of the Municipal Corporations Commissioners (London and Southwark), Parliamentary Paper, 1837 (60), p. 100. See also Emerson, Courts of Law of the City of London.

(*a*) See p. 215, *post*.

(xci.) *Ludlow.*

Ludlow.

397. The Ludlow Court of Record (*b*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every week. There is a recorder of Ludlow, who is consequently judge of the court (*c*). The proceedings are assimilated as nearly as possible to those in the Court of Common Pleas before 1852. A table of fees existed in 1834. Solicitors have audience in this court.

A charter of Edward VI. granted to the corporation a court of pie poudre (*d*), which had fallen into abeyance before 1834.

The corporation has also a court leet (*e*), held once a year before the town clerk as steward (*f*).

(xcii.) *Lyme Regis.*

Lyme Regis.

398. The corporation of Lyme Regis (*g*) had a grant of a court of husting (*h*), to be held according to the customs of London. The court has jurisdiction in actions of debt and assumpsit to any amount. The court is directed to be held weekly before the mayor and capital burgesses (now councillors). The procedure and pleadings are similar to those in the superior courts of common law before 1835. Rules of practice dated 1841 are in existence. No table of fees is in existence, but certain bills of costs are preserved. Summonses are still issued, but judgment is usually obtained by default.

The corporation has also a court leet (*i*).

(xciii.) *Lynn or King's Lynn.*

Lynn.

399. The Guildhall Court of King's Lynn (*k*), or Lynn Regis, has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held twice a week. There is a recorder of the borough, who is judge of the court (*l*). The procedure and pleadings are similar to those in the superior courts of common law before 1830. A table of fees is in existence (*m*), but the court has been in abeyance for many years.

(*b*) This court is held under the authority of a charter of Edward IV. (Rot. Cart., 1 Edw. 4, Part II., No. 12), granted 7th December, 1461.

(*c*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*d*) See p. 136, *ante*.

(*e*) See p. 215, *post*.

(*f*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2783—2793.

(*g*) This court is held under the authority of a charter of Edward I. (Rot. Cart., 13 Edw. 1, memb. 31), granted 1st January, 1285.

(*h*) As to this name, see note (*d*), p. 176, *ante*.

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1303—1309; and information kindly given by the town clerk; see p. 215, *post*.

(*k*) This court is held under the authority of a charter of Henry VIII. (Pat. Rol., 29 Hen. 8, Part V.).

(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*m*) Printed in Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., p. 2403.

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The same charter grants to the corporation a court of Tolbooth for hearing and determining civil pleas where the cause of action arose on the water. There is also a court of pie poudre (*n*), to be held once a year (*o*), and a court leet (*p*) and view of frankpledge, held yearly before the mayor (*q*).

(xciv.) *Macclesfield.*

Macclesfield.

400. The Earl of Derby as hereditary steward (*r*) of the manor and forest of Macclesfield has a court for the liberty of the Hundred of Macclesfield and also a court for the manor and forest of Macclesfield, both of which are held within the town of Macclesfield (*s*). The jurisdiction of these courts extends to personal actions to any amount. They are held before the deputy steward (*t*). There is no recorder of the borough of Macclesfield (*a*).

The Earl of Derby has also a court leet (*b*) in Macclesfield, held before the deputy steward (*c*).

The corporation also appears to have a court of portmote, with jurisdiction in all actions, real, mixed, and personal, to any amount, but whether by prescription or under charter is unknown (*d*). The corporation of Macclesfield has a court of pie poudre (*e*).

(xcv.) *Maidenhead.*

Maidenhead.

401. The Maidenhead Court of Record (*f*) has jurisdiction in all actions, real, mixed, and personal, up to the amount of £20, where either the plaintiff or the defendant is an inhabitant of the town.

(*n*) See p. 136, *ante*.

(*o*) Under the authority of a charter of James I. (Pat. Rol., 2 Jac. 1, Part XXVII.), the corporation of King's Lynn have the grant of a court of Admiralty, see p. 105, *ante*.

(*p*) See p. 215, *post*.

(*q*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2389– 2404.

(*r*) Under a grant to Thomas, Lord Stanley, and his heirs 11th January, 1462.

(*s*) See definition of "borough civil court," Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 7 (1).

(*t*) In 1833 considerable business was done in these courts, in which causes were tried four times a year. The records of these courts from the time of Edward III. exist. In the Record Office there are court rolls of 22 Edw. 3 and following years, portfolio 155, Nos. 55—58.

(*a*) There was a recorder of Macclesfield at the time of the passing of the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76).

(*b*) See p. 215, *post*.

(*c*) Report on certain Boroughs by T. J. Hogg, Parliamentary Paper, 1838 (686), pp. 61—63.

(*d*) A charter dated 29th May, 1261, of Edward, eldest son of Henry III., granted to the burgesses of Macclesfield that they should not be impleaded or adjudged of any plea outside their borough (Earwaker, Hist. of East Cheshire, Vol. II., p. 460). Court Rolls of this court of 22 Edw. 3 and following years are in the Record Office, Court Rolls, portfolio 155, Nos. 55—58.

(*e*) This court is held under the authority of a charter of Charles II., granted 19th November, 1684 (Earwaker, History of East Cheshire, Vol. II., p. 462). See p. 136, *ante*.

(*f*) This court is held under the authority of a charter of 15 Charles II. This charter was surrendered, and a new charter in similar terms, so far as relates to jurisdiction, was granted (1 Jac. 2). Neither of these charters appear to have been enrolled.

The court is directed to be held every three weeks before the mayor (and bridgemasters). Nothing appears to be known as to the practice and procedure of the court, but in 1834 a table of fees was in existence.

The charter also granted a court of pie poudre (*g*), which has been in abeyance for a long period, and a court of the Clerk of the Markets (*h*), to be held once a year before the mayor (*i*).

(xcvi.) *Maidstone.*

Maidstone.

402. The Maidstone Court of Pleas (*k*) has jurisdiction in all actions, real, mixed, and personal, within the borough, and in mixed and personal actions and in replevin to any amount in the parishes of East Farleigh, Barmynge, Looze, Boxley, Allington, Milhale, Newhyth, Linton, and Otham. The court is directed to be held every other week. There is a recorder of Maidstone, who is consequently judge of the court (*l*). Nothing is known of the practice and procedure of the court, which has been in abeyance since 1778.

Under the same charter the corporation has a court of pie poudre (*m*), which has been in abeyance for a long period, and a court of conservancy, for the purpose of preserving the banks of the stream and the fishery, but nothing is known of the procedure of this court.

There is also a court leet (*n*), held annually before the mayor and justices (*o*).

(xcvii.) *Maldon.*

Maldon.

403. The town of Maldon (*p*) has (1) a court of record for the trial of civil actions, which has jurisdiction in personal actions to any amount. The court was directed to be held every three weeks. The recorder of Maldon was judge of the court (*q*), which fell into abeyance before 1768. (2) A court of record for passing the estates of married women. The property must lie within the borough. (3) A court of pie poudre (*r*).

(*g*) See p. 136, *ante*.

(*h*) See p. 137, *ante*.

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2909—2913; and information kindly given by the town clerk.

(*k*) This court is held under the authority of a charter of George II. (Pat. Rol., 21 Geo. 2, Part I., No. 26, granted 17th July, 1747).

(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*m*) See p. 136, *ante*.

(*n*) See p. 215, *post*.

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 751—764.

(*p*) These courts are held under the authority of a charter of George III. (Pat. Rol., 50 Geo. 3, Part XIII., No. 12). The court of record was in existence in 1383. The first grant appears to be by charter of 18 Edw. 1 (printed in Calendar of Charter Rolls, Vol. II., pp. 351, 352), which contains a grant of "sac and soc." The charter of George III. also contains the grant of a court of admiralty (see p. 105, *ante*). This court was last held in 1818.

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*r*) See p. 136, *ante*. Appendix to Report of the Municipal Corporations

SECT. 5. Particular Courts.

(xcviii.) *Marlborough.*

Marlborough.

404. The Mayor's or King's Court of Marlborough (*s*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every three weeks before the mayor. The pleadings are as in the superior courts of common law before 1852.

The corporation also has a court of pie poudre (*t*), disused in 1835, and a court leet (*a*), held twice a year (*b*).

(xcix.) *Monmouth.*

Monmouth.

405. The Monmouth Borough Court (*c*) has jurisdiction in all actions, real, mixed, and personal, to any amount (*d*). The court is directed to be held before the mayor and bailiff. Rules and a table of fees were made in 1833. Very little has been done in this court since 1795 (*e*).

(c.) *Neath.*

Neath.

406. The Neath Court of Pleas (*f*) has jurisdiction in actions of debt up to £100. The court is directed to be held before the constable of the castle of Neath and (the portreeve) now the mayor. This court almost fell into abeyance in 1798, but the date of the last proceeding is 1818. No rules or tables of fees are in existence (*g*).

The mayor has also authority to hold a court baron (*h*), but it has not been held since 1816.

(ci.) *Newark.*

Newark.

407. The Newark Court of Record (*i*) has jurisdiction in actions of trespass, debt, detinue, and replevin to the amount of £200. There is a recorder of Newark, who is consequently judge of the court (*k*). The practice, which is regulated by rules made in 1837 by the then recorder and confirmed by three judges of the

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Commissioners, 1835, Part IV., pp. 2431—2447; and information kindly given by the town clerk.

(*s*) This court is held under the authority of a charter of Queen Elizabeth. (Pat. Rol., 18 Eliz., Part III., f. 4 b).

(*t*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., p. 85.

(*a*) *Ibid.*

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 83—85.

(*c*) This court is held under the authority of charters of Edward VI., James I., and Charles II. (Pat. Rol., 3 Edw. 6, Part I., granted 30th June, 1550; Pat. Rol., 3 Jac. 1, Part XII., fo. 27, granted 2nd September, 1606; Pat. Rol., 17 Car. 2, Part I., No. 1, granted 18th May, 1666).

(*d*) The court is believed to have been originally granted by a charter of 40 Hen. 3. There is no charter-roll for this year in existence.

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 321—325; and information kindly given by the town clerk.

(*f*) This court is held under the authority of a charter of Henry VII. (Pat. Rol., 14 Hen. 7, Part II.).

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 333—336; and information kindly given by the town clerk.

(*h*) See p. 216, *post.*

(*i*) This court is held under the authority of a charter of Charles I. (Pat. Rol., 2 Car. 1, Part XV., No. 10), granted 1st July, 1626.

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante.*

superior courts of common law (*l*), is similar to that of the superior courts before 1852. The court has not been held since 1898 (*m*).

(cii.) *Newbury.*

Newbury.

408. The Newbury Court of Record (*n*) has jurisdiction in personal actions up to £13 6*s.* 8*d.* (20 marks), but in consequence of there being a recorder of Newbury, who is judge of the court (*o*), the jurisdiction is increased to £20 in personal actions, and extends to include actions of ejectment where the rent of the premises sought to be recovered does not exceed £20 and upon which no fine is reserved or made payable (*p*). The court is directed to be held every week. The process is by summons, and the pleadings and procedure, which are governed by rules made in 1832 (*q*), are similar to those in the superior courts of common law before 1852. The court has been in abeyance for many years. The corporation also have a court of pie poudre (*r*), but in 1834 it had only been held once within the memory of the then members of the corporation.

As lords of the manor of Newbury the corporation have a court leet (*s*), to be holden twice a year (*t*).

(ciii.) *Newcastle-under-Lyme.*

Newcastle-under-Lyme.

409. The Court of Record of Newcastle-under-Lyme (*a*) has jurisdiction in actions of contract or trespass up to £50. The court is directed to be held every three weeks. There is a recorder of Newcastle-under-Lyme, who is judge of the court (*b*). The pleadings and practice are similar to those in the superior courts before 1852. There are no rules or tables of fees in existence. The court has been in abeyance for about seventy years (*c*).

The corporation also have a court of pie poudre (*d*).

(*l*) Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, pp. 129—138.

(*m*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1935—1937; and information kindly given by the town clerk. See also Civil Judicial Statistics, 1868—1905.

(*n*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol., 38 Eliz., Part VI., fo. 15 b). There was a surrender of this charter and a regrant by a charter of the first year of James II., which was in identical terms as regards the court.

(*o*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante.*

(*p*) *Ibid.*, s. 183. See p. 130, *ante.*

(*q*) These rules are founded on those drawn up for the corporation of Reading in 1793 by Mr. Dampier (afterwards Dampier, J.).

(*r*) See p. 136, *ante.*

(*s*) See p. 215, *post.*

(*t*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 89—91; and information kindly given by the town clerk.

(*a*) This court is held under the authority of charters of Queen Elizabeth and Charles II. (Pat. Rol., 32 Eliz., Part XX., fo. 30 b, granted 8th May, 1590; Pat. Rol., 16 Car. 2, Part XIX.).

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante.*

(*c*) Information kindly given by the town clerk.

(*d*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1951—1954. See p. 136, *ante.*

SECT. 5. Particular Courts.

(civ.) *Newcastle-upon-Tyne.*

Newcastle-upon-Tyne.

410. The burgess (*e*) and non-burgess (*f*) courts of Newcastle-upon-Tyne (*g*) have jurisdiction in all actions, real, mixed, and personal, to any amount. Actions against freemen are brought in the burgess court and those against non-freemen in the non-burgess court. The jurisdiction of these courts was extended in March, 1838, to the borough of Gateshead (*h*). There is a recorder of Newcastle-upon-Tyne, who is consequently judge of these courts (*i*). The practice and procedure are regulated by the Common Law Procedure Act, 1852 (*k*). Rules were also made in 1871 under the Debtors Act, 1869 (*l*). There is a printed table of fees and solicitors' costs (*m*). Solicitors have audience. The court is still in use.

The corporation have also a grant of a court of conservancy, to be held once a year (*m*).

There was an ancient Court of the Staple at Newcastle-upon-Tyne (*n*).

(cv.) *Newport (Isle of Wight).*

Newport (Isle of Wight).

411. The Newport Court of Record (*o*) has jurisdiction in mixed and personal actions to any amount (*p*). The court is directed to be held twice a week, before the mayor and aldermen, or any three of them, the mayor being one. The procedure is almost exactly similar to that of the King's Bench before 1852. This court fell into abeyance about 1836.

The charter also granted a court of pie poudre (*q*), held before

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(*e*) Formerly called the mayor's court. This court was a prescriptive court dating back at least to the time of Henry I. (see Stubbs, Select Charters, p. 107). The local tradition is that this court existed in Roman times.

(*f*) Formerly called the sheriff's court. Originally granted by charter of 1 Hen. 4. The corporation possess records of this court back to 1613.

(*g*) These courts are held under the authority of a charter of Queen Elizabeth (Pat. Rol., 42 Eliz., Part XXI., fo. 39 b). Confirmed by a charter of 2 Jac.

(*h*) By warrant of Her late Majesty in Council under the Municipal Corporation (General) Act, 1837 (7 Will. 4 & 1 Vict. c. 78), s. 35, now repealed and re-enacted by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 5, 185. This is apparently the only instance in which this power of increasing the area of jurisdiction of a local court of record has been exercised.

(*i*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*k*) The whole of this Act, 15 & 16 Vict. c. 76, and the rules made thereunder were extended to these courts by Order in Council of 13th September, 1854 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 138).

(*l*) 32 & 33 Vict. c. 62. The rules are printed in Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, pp. 139—144.

(*m*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1633—1648; and information kindly given by the town clerk.

(*n*) Statute of the Staple (27 Edw. 3, stat. 2, c. 19), see p. 137, *ante*. Under charter of Henry VI. (Rot. Cart., 21—24 Hen. 6, No. 39) the burgesses of Newcastle-upon-Tyne were exempted from the jurisdiction of the Admiral of England, but this exemption is now repealed (see p. 90, *ante*).

(*o*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 13 Car. 2, Part XIII., No. 4).

(*p*) There seems once to have been a court within the borough, with cognisance of pleas of land, and in which deeds were regularly registered.

(*q*) See p. 136, *ante*.

the mayor and a court of admiralty (*r*). There is also a court leet (*a*), to be held twice a year before the town clerk as steward.

(cvi.) *Newport* (*Monmouth*).

Newport (Monmouth).

412. The Newport Court of Record (*b*) has jurisdiction in actions of debt to any amount. It ought to be held weekly before the mayor. No rules or tables of fees or costs are in existence, and in 1833 the practice was unknown.

Apparently the corporation have a court of pie poudre (*c*).

(cvii.) *Northampton.*

Northampton.

413. The Court of Record of the borough of Northampton (*d*), also called the Northampton Court of Pleas, which is still in use, has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every three weeks. The recorder of Northampton is judge of the court (*e*). The procedure is regulated by the Common Law Procedure Acts, 1852 (*f*) and 1854 (*g*). The whole of the provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*h*), have been extended to this court. There is a table of fees, made subsequently to 1845.

There is also a court of the clerk of the market (*i*), held before the mayor (*k*).

(cviii.) *Norwich.*

Norwich Guildhall Court.

414. The Norwich Guildhall, or Sheriff's Court (*l*), has jurisdiction in mixed and personal actions to any amount. The court is directed to be held twice a week before the steward, who must

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(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 773—783; and information kindly given by the town clerk.

(*a*) See p. 215, *post.*

(*b*) This court is held either under a prescriptive right or under the authority of a charter of James I. (Pat. Rol., 21 Jac. 1, Part XI.), granted 20th September, 1623. This charter confirms the prescriptive franchises of the corporation, as well as those granted by a charter of Henry, Duke of Buckingham. The court of record appears on the whole to have a prescriptive origin.

(*c*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 341—347. See p. 136, *ante.*

(*d*) This court is held under the authority of a charter of George III. (Pat. Rol., 36 Geo. 3, Part VI., No. 1).

(*e*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante.*

(*f*) 15 & 16 Vict. c. 76. The whole of the provisions of this Act and of the rules thereunder were extended to this court by Order in Council of 25th November, 1853 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 144).

(*g*) 17 & 18 Vict. c. 125. The whole of the provisions of this Act and of the rules thereunder were extended to this court by Order in Council of 14th November, 1854 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 145).

(*h*) 18 & 19 Vict. c. 67, by Order in Council of 19th October, 1855 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 145).

(*i*) See p. 137, *ante.*

(*k*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1965—1970; and information kindly given by the town clerk.

(*l*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 15 Car. 2, Part VI., No. 4).

SECT. 5. Particular Courts.

be a barrister of five years' standing. Consequently the recorder of Norwich is not *ex officio* the judge of this court (*m*).

The procedure is that established by the Common Law Procedure Acts, 1852 (*n*) and 1854 (*o*). The whole of the provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*p*), have been extended to this court, as also have been those of the schedule to the Borough and Local Courts of Record Act, 1872 (*q*).

The court is still in use. It appears to have originated in a court of husting, on the model of that of London (*r*).

Norwich Court of Pleas.

There is also a court of pleas, with jurisdiction in real actions, to be held before the mayor and sheriffs or one of them. As the steward does not appear to have been judge of this court in 1835, the recorder of Norwich is judge (*s*).

Court of Equity.

The corporation have a court of equity (*a*), to be held before the mayor and two justices. This court had been in abeyance long before 1833 (*b*). It does not seem to have been a court of record.

The corporation of Norwich have had a court leet (*c*) and view of frankpledge since the thirteenth century (*d*).

There was an ancient Court of the Staple at Norwich (*e*).

(cix.) *Nottingham.*

Nottingham.

415. Under a charter of Henry VI. (*f*) the Court of Record of Nottingham has jurisdiction in all actions, real, mixed, and personal, to any amount. The jurisdiction of this court has been excluded in all cases in which the county court has jurisdiction (*g*). The court is directed to be held from day to day. The recorder of Nottingham is judge of the court (*h*). The procedure is similar

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(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*. At the present time there is a judge of the court appointed by the corporation.

(*n*) 15 & 16 Vict. c. 76. This Act, with certain exceptions, and the rules thereunder were extended to this court by Order in Council of 3rd July, 1854 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 146).

(*o*) 17 & 18 Vict. c. 125. This Act, with certain exceptions, and the rules thereunder were extended to this court by Order in Council of 20th May, 1857 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 147).

(*p*) 18 & 19 Vict. c. 67, by Order in Council of 20th May, 1857, *ubi supra*.

(*q*) 35 & 36 Vict. c. 86, by Order in Council of 17th July, 1873 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 148).

(*r*) See note (*d*), p. 176, *ante*.

(*s*) See note (*r*), p. 134, *ante*.

(*a*) This court was granted to the corporation by a charter of Philip and Mary (Pat. Rol., 2 & 3 Phil. & Mar., Part VIII.).

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2459—2468.

(*c*) See p. 215, *post*.

(*d*) See "Leet Jurisdiction in the City of Norwich," Selden Society Publications, Vol. V.

(*e*) Statute of the Staple (27 Edw. 3, stat. 2, c. 19). See p. 137, *ante*.

(*f*) Pat. Rol., 27 Hen. 6, Part II., memb. 6, printed with a translation in Records of the Borough of Nottingham, Vol. II., pp. 186—209 (see pp. 194, 195).

(*g*) By Order in Council of 13th November, 1858 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 149).

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

to that of the superior courts of common law before 1852. No rules or tables of costs or fees are known to be in existence. The court has been in abeyance for a long period (*i*).

The corporation, as lords of the manor, have a court leet (*j*), to be held twice a year (*k*).

The charter also exempts the borough from the jurisdiction of the Clerk of the Market of the King's Household (*l*).

(cx.) *Oswestry.*

Oswestry.

416. Under a charter of Charles II. (*m*) the Oswestry Court of Record has jurisdiction in personal actions to any amount. The court is directed to be held weekly. The recorder is judge of the court (*n*). The practice and procedure are similar to those in the superior courts of common law before 1852. By the charter the fees are to be the same as those in the Ludlow Court of Record (*o*). These are stated to be half those taken in the Court of Common Pleas before 1852. The court does not appear to have been held since 1881 (*p*).

The charter also granted to the corporation a court of pie poudre (*q*), which has long been in abeyance (*r*).

(cxi.) *Oxford University.*

Oxford University.

417. A charter of Edward III. (*s*) granted to the university that in all causes, where a clerk is one party, in contracts and trespasses the chancellor of the university should have cognisance thereof. Another charter of Henry VIII. (*t*) made the jurisdiction exclusive (*a*) so far as regards defendants (*b*). By the university statutes (*c*) the court of the commissary or vice-chancellor of the

(*i*) No record of any business being done appears in the Civil Judicial Statistics, 1868—1905.

(*j*) See p. 215, *post*.

(*k*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1985—1994.

(*l*) See p. 137, *ante*.

(*m*) Pat. Rol., 25 Car. 2, Part II., No. 5, granted 13th January, 1674.

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*o*) See p. 179, *ante*.

(*p*) Civil Judicial Statistics, 1882—1905.

(*q*) See p. 136, *ante*.

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2823—2829.

(*s*) Pat. Rol., 5 Edw. 3, Part II., memb. 8, granted 16th October, 1331.

(*t*) 14 Hen. 8, set forth in "Registrum Privilegionum Almæ Universitatis Oxoniensis" (1770), p. 40. This charter is confirmed by stat. 13 Eliz. c. 29. The sections in question, with a translation, are printed in the report of *Ginnett* v. *Whittingham* (1886), 16 Q. B. D. 761, at pp. 762—765.

(*a*) Where a plaintiff who resided in London brought an action in the High Court for libel against a resident undergraduate member of the university, and the chancellor claimed cognisance of the action in his court under the charter, it was held that the privilege of the charter extended to cases in which the plaintiff resided outside the limits of the city of Oxford, and therefore that the claim must be allowed (*Ginnett* v. *Whittingham*, *supra*).

(*b*) *Hayes* v *Long* (1766), 2 Wils. 310.

(*c*) Statuta Universitatis Oxoniensis, 1907, tit. XXI., s. 1 (2).

SECT. 5. Particular Courts.

university is directed to be held once a week, even in vacation (if it seems fit to the vice-chancellor) before the vice-chancellor or his deputy, assisted by the two proctors of the university (if they think fit to attend). The deputy of the vice-chancellor must be either a doctor or bachelor of civil law (*d*). There is a registrar of the court, who must be a master of arts or bachelor of civil law (*e*).

The practice and procedure in the court are regulated by rules, forms, and scales of fees and costs made in 1892 by the vice-chancellor and confirmed by the rule committee (*f*).

The enactments and rules of the Supreme Court relating to appeals from county courts have been applied to this court (*g*).

Oxford University.

If on the hearing of a cause the machinery or jurisdiction of the court appear to the judge inadequate to do justice between the parties, he may in his discretion give leave to either party to take proceedings in some other competent court (*h*).

Proctors, at least three in number, being masters of arts, or bachelors of civil law, skilled in the practice of the law and approved by the vice-chancellor, or barristers and solicitors approved by the vice-chancellor, have the right to practise in the court. By leave of the court barristers not qualified as proctors may be heard. Leave to be heard by counsel must be obtained by special application (*i*). This court is still in full operation (*k*).

The court has also criminal jurisdiction in all cases in which a resident member of the university is prosecutor or defendant, except in treason, felony, or mayhem. The jurisdiction is exclusive where a resident member of the university is defendant (*l*).

By a charter of Edward III. (*m*) the assize of bread, wine, and beer and the supervision of weights and measures in the city of Oxford and its suburbs were granted to the university. Under this power two clerks of the market (*n*) are appointed from among the

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(*d*) Statuta Universitatis Oxoniensis, 1907, tit. XXI., s. 1 (3). The 1908 edition says barrister of five years' standing, who is a member of Convocation.

(*e*) *Ibid.*, s. 1 (4), and shall be a solicitor of the Supreme Court.

(*f*) Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, pp. 150—168. The judge may in any case allow such further occasional costs as he may deem to have been fairly and properly incurred (Statutory Rules and Orders Revised, Vol. VI., Inferior Courts, England, p. 167).

(*g*) By Order in Council of 23rd August, 1894, made under the Judicature Act, 1875 (38 & 39 Vict. c. 77), and the Statute Law Revision and Civil Procedure Act, 1883 (46 & 47 Vict. c. 49) (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 168).

(*h*) Rules of the Vice-Chancellor's Court of the University of Oxford, r. 23.

(*i*) *Ibid.*, r. 19.

(*k*) Information kindly given by the registrar.

(*l*) There is some doubt as to how far the jurisdiction is interfered with by the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49). This depends on whether the chancellor or vice-chancellor in the exercise of their jurisdiction is a court of summary jurisdiction within the meaning of the Act. See this point discussed in Rashdall, Universities of Europe, Vol. II., Part II., pp. 786-789.

(*m*) 29 Edw. 3, 27th June, 1355, printed in Ayliffe, University of Oxford, Vol. II., Appendix, p. xxviii.

(*n*) See p. 137, *ante*.

heads of houses, masters of arts, and bachelors of divinity, medicine, and law, one by the chancellor and the other by the vice-chancellor. The Clerks of the Market may either punish offenders themselves or bring them before the vice-chancellor (*o*).

(cxii.) *Oxford City.*

Oxford.

418. The Oxford Mayor's Court (*p*) has jurisdiction over personal actions to any amount. Members of the university are, however, exempt from the jurisdiction of the court. The pleadings are as at common law before 1852. The court is directed to be held every week. There is a recorder of Oxford, who is consequently judge of the court (*q*), which is still used (*r*).

The charter also confirms the jurisdiction of the Oxford Court of Husting (*s*), which is co-extensive in personal actions with that of the Mayor's Court, and in addition has jurisdiction in real and mixed actions.

The corporation have also a court of pie poudre (*t*), which had long been in abeyance in 1833, and a court leet (*u*).

(cxiii.) *Pembroke.*

Pembroke.

419. The Mayor's Fortnight Court of Pembroke (*b*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held from fifteen days to fifteen days before the mayor or his deputy. The court had been in abeyance for sixty years in 1834.

The charter also granted a court of pie poudre (*c*), which also had fallen into disuse before 1834 (*d*).

(cxiv.) *Penryn.*

Penryn.

420. The Penryn Court of Record (*e*) had jurisdiction in personal actions up to the amount of £40. The court is directed to be held

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(*o*) Statuta Universitatis Oxoniensis, 1907, tit. XVII., s. 6.

(*p*) This court is held under the authority of a charter of James I. (Pat. Rol., 3 Jac. 1, Part I., f. 1), granted 29th July, 1605. This charter only confirms a franchise resting on prescription as well in the case of the Mayor's Court as in that of the Court of Husting.

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*r*) One plaint was entered in 1904, but it was withdrawn or struck out (Civil Judicial Statistics, 1904, Parliamentary Paper, 1906 [C. 2945], p. 165). No plaint was entered in 1905 (Civil Judicial Statistics, 1905, Parliamentary Paper, 1907 [C. 3477], p. 165).

(*s*) See note (*d*), p. 176, *ante*.

(*t*) See p. 136, *ante*.

(*u*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 97—103.

(*b*) This court is held under the authority of a charter of Richard III., granted 19th March, 1485, confirmed by charter of 5 Jac. 1, granted 6th July. In the charter the court is called a "court of hundred," but the title of the "Mayor's Fortnight Court" appears to have been commonly used.

(*c*) See p. 136, *ante*.

(*d*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 365—369.

(*e*) This court is held under the authority of a charter of James I. (Pat. Rol.,

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every three weeks before the mayor, aldermen (and recorder), or two of them, of whom the mayor must be one. There is no recorder of Penryn. No records, rules, or tables of fees relating to this court are in existence.

There is also a court of the manor of Penryn Forryn, with an extensive but undefined jurisdiction extending over the borough of Falmouth (*f*).

(cxv.) *Penzance.*

Penzance.

421. The Penzance Court of Record (*g*) has jurisdiction in personal actions up to £50. The court is directed to be held every fortnight. There is a recorder of Penzance, who is judge of the court (*h*). In 1833 an old book of rules was in existence. The court has been in abeyance for many years. Solicitors are entitled to audience in this court (*i*).

(cxvi.) *Peterborough.*

Peterborough.

422. The Dean and Chapter of Peterborough (*k*) have a court of common pleas (*l*), with jurisdiction in mixed and personal actions to any amount arising in the soke of Peterborough. The court is directed to be held weekly before the steward of the dean and chapter, who is always a solicitor. His remuneration is derived from fees (*m*). The court has not been used since 1893 (*n*). Under other charters the dean and chapter have also a court of pie poudre (*o*), a court leet (*p*), and view of frankpledge (*q*).

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18 Jac. 1, Part XII., No. 2), granted 5th February, 1621. This charter was surrendered, and a new charter in similar terms as to the court granted, 1 Jac. 2. This charter seems never to have been enrolled.

(*f*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 563, 564.

(*g*) The court is held under the authority of a charter of James I. (Pat. Rol., 12 Jac. 1, Part XIX., No. 1), granted 9th May.

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*i*) Appendix to the Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 571, 572.

(*k*) This court is held under the authority of a charter of Henry III. (Chart. Rol., 54 Hen. 3, memb. 8), granted 15th May, 1270. This charter grants to the abbot and convent of Peterborough, of whom the dean and chapter are successors, "sac and soc" and all pleas of withernam within their hundreds in Northamptonshire.

(*l*) The court was anciently called "Curia de Portman Mote" (Bridges and Whalley, Hist. of Northamptonshire, Vol. II., p. 537).

(*m*) Parliamentary Paper, 1888 (C. 187), lxxxii. 169.

(*n*) One plaint was entered in 1893, which was determined for the plaintiff by consent (Civil Judicial Statistics, 1893, Parliamentary Paper, 1894 [C. 7510], p. 38, xcv.).

(*o*) See p. 136, *ante*.

(*p*) See p. 215, *post*.

(*q*) See Placita de Quo Warranto, *temp.* Edw. 1, 2, 3, p. 551. The justices of the liberty of Peterborough appear to be entitled to have separate commissions of oyer and terminer and of gaol delivery directed to them. This was done on 22nd December, 1845. These commissions remained in force, notwithstanding the death of the late Queen Victoria, by the operation of s. 1 of the Demise of

(cxvii.) *Plymouth.*

Plymouth.

423. The Plymouth Mayor's Court or Borough Court (*r*) has jurisdiction in all actions, real, mixed, and personal, to any amount. There is a recorder of Plymouth, who is judge of the court (*s*). Rules were made for the court in 1832. The practice is generally similar to that of the Court of Common Pleas before 1852. Counsel and solicitors have audience as advocates. The court has been in abeyance for many years (*t*).

The corporation have a court leet (*a*) and view of frankpledge (*b*).

(cxviii.) *Pontefract*

Pontefract.

424. The Court Burgess and Foreign of Pontefract (*c*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every three weeks. The recorder of Pontefract is the judge of the court (*d*). In 1834 a table of fees was in existence (*e*).

(cxix.) *Poole.*

Poole.

425. The Poole Court of Record (*f*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held weekly. The recorder is judge of the court (*g*). The practice and procedure is analogous to that of the superior courts of common law before 1852, except that the whole of the provisions of the Summary Procedure Bills of Exchange Act, 1855 (*h*), and of the schedule to the Borough and Local Courts of Record Act, 1872 (*i*), have been extended to the court. There are rules and tables of fees etc. in existence.

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the Crown Act, 1901 (1 Edw. 7, c. 5). See Gaches, Liberty of Peterborough, pp. 51, 52.

(*r*) This court is held under the authority of a charter of Henry VI. Before the incorporation of Plymouth the court was held by the seneschal of the Prior of Plympton.

(*s*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*t*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 579—584; and information kindly given by the town clerk.

(*a*) See p. 215, *post*.

(*b*) 4 Edw. 4 (Britton and Brayley, Devon, Vol. I., p. 147).

(*c*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 29 Car. 2, No. 7). This charter was surrendered, and a new charter in similar terms so far as regards the franchise of the court was granted (1 Jac. 2). The court was first granted by a charter of 2 Ric. 3.

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1673—1677.

(*f*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol., 10 Eliz., Part II.), granted 23rd June, 1568, and Charles II., granted 20th November, 1666, enrolled Pat. Rol., 19 Car. 2, Part IX., No. 10.

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*h*) 18 & 19 Vict. c. 77, by Order in Council of 31st July, 1858 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 168).

(*i*) 35 & 36 Vict. c. 86, by Order in Council of 26th June, 1873 (*ibid.*, p. 169).

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The court is still held, but no plaints seem to have been entered since 1900 (*k*).

Poole being a county of itself, the sheriff has jurisdiction to hold his county court (*l*).

(cxx.) *Portsmouth.*

Portsmouth.

426. The Portsmouth Court of Record (*m*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held weekly. There is a recorder of Portsmouth, who is the judge of the court (*n*). The practice and procedure is similar to that of the superior courts of common law before 1852. Counsel and solicitors have audience in this court. Rules made in 1842 are in existence (*o*). The court has not been used for many years (*p*).

The corporation have also a court of pie poudre (*q*) and a court leet (*r*), to be held twice a year before the mayor (*s*).

(cxxi.) *Preston.*

Preston.

427. The Preston Court of Record (*a*) has jurisdiction in personal actions to any amount. The court is directed to be held every three weeks, and is still in use. The recorder is the judge of the court (*b*). The practice and procedure is regulated by the Common Law Procedure Act, 1852 (*c*), certain provisions of which, and of the rules made thereunder, were extended to this court (*d*).

The charter also granted to the corporation a court of pie poudre (*e*) and a court leet (*f*) and view of frankpledge (*g*).

(*k*) Civil Judicial Statistics, 1901—1905. The corporation have also a court of admiralty (see p. 105, *ante*) with a silver oar as insignia.

(*l*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1319—1323; and information kindly given by the town clerk. The total costs recoverable shall not exceed £1 where the amount recovered is not more than £5, nor £1 10*s*. where the amount recovered is above £5, but not more than £10, unless specially allowed by the judge.

(*m*) This court is held under the authority of a charter of Charles I. (Pat. Rol., 3 Car. 1, Part XXX.), granted 17th November, 1628.

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*o*) Printed in Appendix to Rawlinson's Municipal Corporations Act, 4th ed.

(*p*) Civil Judicial Statistics, 1868—1905.

(*q*) See p. 136, *ante*.

(*r*) See p. 215, *post*.

(*s*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 801—813; and information kindly given by the town clerk.

(*a*) This court is held under the authority of a charter of Charles II. (1684).

(*b*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*c*) 15 & 16 Vict. c. 76.

(*d*) By Order in Council of 13th September, 1854 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 170). For the history and jurisdiction of the court, see *Addison* v. *Preston Corporation* (1852), 12 C. B. 108; and as to appeals, see *Darlow* v. *Shuttleworth*, [1902] 1 K. B. 721.

(*e*) See p. 136, *ante*.

(*f*) See p. 215, *post*.

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1683—1691; and information kindly given by the town clerk.

(cxxii.) *Ramsey* (*Huntingdonshire*).

Ramsey.

428. The Ramsey Court of Pleas (*h*). This court has jurisdiction in personal actions up to any amount. The judge of the court is appointed by Lord de Ramsey, and is paid by fees (*i*).

(cxxiii.) *Reading.*

Reading.

429. The Reading Borough Court of Record (*k*) has jurisdiction in personal actions up to £10, which jurisdiction is increased to £20 (*l*), and also in ejectment up to £20, as there is a recorder of Reading, being a barrister of five years' standing who is judge of the court (*m*). Rules were made for the court in 1792 (*n*). By the charter the right of audience is restricted to four solicitors, to be admitted by the corporation.

The corporation has also a court leet (*o*) and view of frankpledge as lords of the manor of Reading (*p*).

(cxxiv.) *Retford* (*East*).

Retford (East).

430. The Court of Record of East Retford (*q*) has jurisdiction in personal actions up to any amount. The court is directed to be held every three weeks. There is a recorder of East Retford, but as in 1835 there was a separate judge entitled the steward of the court, who was a barrister of five years' standing, the recorder is not *virtute officio* the judge of the court (*r*). The practice and procedure are similar to those of the superior courts of common law before 1852. This court has practically been in abeyance since 1816 (*s*).

(cxxv.) *Richmond* (*Yorks*).

Richmond (Yorks).

431. The Richmond Court of Record (*t*) has jurisdiction in personal actions up to the amount of £100. The court is directed

(*h*) A charter of Henry I., printed in Dugdale's Monasticon Anglicanum (ed. 1846), Vol. II., p. 563, granted to the Benedictine Abbey of Ramsey the franchise of "sac and soc" (*i.e.*, of holding a free court). Under a charter of Henry VIII. (Pat. Rol., 31 Hen. 8, Part IV., memb. 11, dated 4th March, 1540) the house and site of the abbey of Ramsey were granted to Sir Richard Cromwell, together with all jurisdiction and courts thereof. This franchise is now vested in Lord de Ramsey as the successor in title to Sir Richard Cromwell.

(*i*) Parliamentary Paper, 1888 (C. 187), lxxxii. 169.

(*k*) This court is held under the authority of a charter of Charles I. (Close Roll 15 Car. 1, Part XI., No. 23).

(*l*) Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 118. This jurisdiction is continued by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 183.

(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*n*) By Mr. Dampier, afterwards Dampier, J.

(*o*) See p. 215, *post*.

(*p*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 111—114.

(*q*) This court is held under the authority of a charter of James I. (Pat. Rol., 5 Jac. 1, Part XXVIII.). The franchise was originally granted by Henry VI. in 1424.

(*r*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*s*) Only five plaints were entered between 1816 and 1833 (Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1861—1863).

(*t*) This court is held under the authority of a charter of Charles II. (Pat.

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to be held every fortnight. There is a recorder of Richmond, who is consequently judge of the court (*a*). The court fell into abeyance on the establishment of county courts in 1846, and the last court was held in 1849.

The charter also grants a court leet (*b*) and view of frankpledge, to be held before the mayor and aldermen (*c*), and a court of pie poudre (*d*).

(cxxvi.) *Ripon.*

Ripon.

432. The Ripon Court of Record (*e*) has jurisdiction in mixed and personal actions up to the amount of £50. The charter of James I. directed the court to be held every fortnight, but the charter of James II. directed the court to be held once in every March. The mayor (and the recorder or his deputy) are the judges of the court. There is now no recorder of Ripon (*f*). This court fell into abeyance long before 1835.

The corporation have also a court of pie poudre (*g*), held before the mayor (*h*).

The Dean and Chapter of Ripon have a court of pleas called the Canon Fee Court (*i*).

In 1844 there existed a court military for the recovery of debts to any amount, the officers of which were appointed by the Lord Lieutenant of the West Riding. This court had jurisdiction over the borough and liberty of Ripon (*k*).

(cxxvii.) *Rochester.*

Rochester.

433. The Rochester Court of Portmote (*l*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held from fifteen days to fifteen days. The recorder of Rochester is judge of the court (*m*). There appears to have

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Rol., 20 Car. 2, Part I., No. 5). The jurisdiction was originally granted by a charter of 19 Eliz.

(*a*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*b*) See p. 215, *post*.

(*c*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1697—1703 ; and information kindly given by the town clerk.

(*d*) See p. 136, *ante*.

(*e*) This court is held under the authority of a charter of James I. and James II. (Pat. Rol., 2 Jac. 1, Part XVII. ; 2 Jac. 2, not enrolled on Pat. Rol.).

(*f*) There was a recorder of Ripon at the time of the passing of the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76).

(*g*) See p. 136, *ante*.

(*h*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1707—1710. The Archbishop of York had a civil court at Ripon, with jurisdiction in personal actions to any amount. The judge was the steward learned of the Archbishop. This court was abolished by the Liberties Act, 1836 (6 & 7 Will. 4, c. 87), s. 1.

(*i*) 22nd July, 1604.

(*k*) Including the parishes of Ripon and Nidd-with-Killinghall (Lewis, Topographical Dictionary, Vol. III., p. 646).

(*l*) This court is held under the authority of a charter of Charles I. (Pat. Rol., 5 Car. 1, Part XVII., No. 6), granted 7th August, 1629. The jurisdiction was originally granted by a charter dated 6th November in the twelfth year of Henry II. or III.

(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

been no settled practice and procedure, and the court has been in abeyance since 1835 (*n*).

The charter also granted a court of pie poudre (*o*), which has not been held since 1810 (*p*).

The corporation as lord of the manor have a court leet (*q*), to be held once a year. There is also another court leet held in the open air on Boley Hill, a place within the city (*r*).

(cxxviii.) *Romsey.*

Romsey.

434. The Romsey Court of Record (*s*) has jurisdiction in mixed and personal actions up to the amount of £40. The court is directed to be held weekly before the mayor (the recorder or his deputy), and the aldermen or any two of them, of whom the mayor must be one. There is no recorder of the borough. The practice and procedure of the court is similar to that of the superior courts of common law before 1852.

The charter also granted a court of pie poudre (*t*), which was in abeyance in 1835 (*a*).

(cxxix.) *Ruthin.*

Ruthin.

435. The court of the lordship of Ruthin (*b*) has jurisdiction in personal actions up to any amount. The court is directed to be held every fortnight before the steward of the lordship, but the court fell into abeyance about 1835.

There is also a court leet (*c*) and view of frankpledge, held before the steward of the lordship (*d*).

(cxxx.) *Rye.*

Rye.

436. The Rye Court of Record (*e*) has jurisdiction in all actions, real, mixed, and personal, up to any amount. The court is directed to be held at the accustomed times, that is to say every alternate

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(*n*) Information kindly given by the town clerk.

(*o*) See p. 136, *ante*.

(*p*) Under a charter of Edward IV, granted 14th December, the corporation of Rochester have the grant of a court of Admiralty. See p. 105, *ante*. This court has a jurisdiction in respect of the oyster fishery and the free dredgers.

(*q*) See p. 215, *post*.

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 843—857.

(*s*) This Court is held under the authority of a charter of William III. (Pat. Rol., 10 Will. 3, Part VIII., No. 1).

(*t*) See p. 136, *ante*.

(*a*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1331, 1332.

(*b*) This Court is held under a grant of the Lordship of Ruthin by Charles I. (Pat. Rol., 10 Car. 1, Part XXXV.).

(*c*) See p. 215, *post*.

(*d*) This court dates back at least to 1245 A. D. (Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2847—2851).

(*e*) This Court is held under the anthority of the charter of the Cinque Ports granted by Charles II, 23rd December, 1668, printed in Jeake, Charters of the Cinque Ports, p. 120. This charter contains *inspeximus* and confirmation of previous charters of 1 Eliz. (granted 8th March, 1559) and 43 Eliz. (26th January, 1601). The corporation claims to hold all its franchises by prescription.

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Wednesday. There is a recorder of Rye, who is judge of the court (*f*), which has been in abeyance since 1791.

Under the charter the barons have a court leet (*g*).

(cxxxi.) *St. Albans.*

St. Albans.

437. The St. Albans Court of Record (*h*) has jurisdiction in mixed and personal actions up to the amount of £50. The court is directed to be held every week before the mayor and aldermen, of whom the mayor must be one, or in their absence before two of the senior aldermen. The charter directs that the mayor and aldermen (the mayor being one) shall elect three or four discreet freemen to be attorneys of the court. This court has been in abeyance since 1789.

There is a court of pie poudre (*i*), which was totally disused in 1834. The corporation have also a court leet (*k*) and view of frankpledge. There is also an annual court of the Clerk of the Markets (*l*), to be held before the mayor, for the inspection of weights and measures within the borough (*m*).

(cxxxii.) *St. Ives (Cornwall).*

St. Ives (Cornwall).

438. The corporation of St. Ives have a Court of Record (*n*), which had been in abeyance for many years in 1834, and no records of it are in existence (*o*).

There is also a court leet (*p*) for the manor of Luddenham, the privilege of which is claimed by the borough of St. Ives by prescription and tenure (*q*).

(cxxxiii.) *Saffron Walden.*

Saffron Walden.

439. The Saffron Walden Court of Pleas (*r*) has jurisdiction in personal actions up to any amount. The court is directed to be held every three weeks. The recorder is judge of the court (*s*).

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1031, 1035.

(*h*) This court is held under the authority of a charter of Charles II, (cls. 40—42), granted 27th July, 1664. This charter increased the jurisdiction from £38 to £50. The jurisdiction was originally granted by a charter of 7 Edw. 6, dated 12th May, 1554.

(*i*) See p. 136, *ante*.

(*k*) See p. 215, *post*.

(*l*) See p. 137, *ante*.

(*m*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2918—2926; and information kindly given by the town clerk.

(*n*) This court is held under the authority of a charter of James II, granted 28th May, 1685. This charter is not enrolled. The borough was first incorporated in 1639 by a charter of Charles I., which granted this court to the corporation etc.

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 619, 620.

(*p*) See p. 215, *post*.

(*q*) Gilbert, History of Cornwall, Vol. II., p. 258. According to this authority the court was confirmed to the borough by the above-mentioned charters.

(*r*) This court is held under the authority of a charter of William and Mary (Pat. Rol., 6 Will. & Mar., Part VIII., No. 1).

(*s*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176.

The jurisdiction is extended to actions of ejectment where the rent of the premises sought to be recovered does not exceed £20, and there is no fine (*t*). The court has long been in abeyance, and nothing appears to be known of its practice and procedure.

The charter also grants to the corporation a court of pie poudre (*u*).

(cxxxiv.) *Salford Hundred.*

Salford Hundred.

440. The present Court of Record for the Hundred of Salford, in the county of Lancaster, was constituted in 1868 (*v*) by the amalgamation of two then existing courts, namely, the ancient Salford Hundred Court (*w*) and the Manchester Court of Record (*x*).

Jurisdiction.

441. The jurisdiction of the court is fixed by the Act of Parliament (*a*) constituting the court as follows:—

Personal actions (except actions for malicious prosecution), if the cause of action arise within the hundred (*b*), in which the debt or

(*t*) Municipal Corporations Acts, 1835 (5 & 6 Will. 4, c. 76), s. 118, and 1882 (45 & 46 Vict. c. 50), s. 183.

(*u*) See p. 136, *ante*.

(*v*) By Salford Hundred Court of Record Act, 1868 (31 & 32 Vict. c. cxxx.), which Act, after reciting that the Court of Record for the Hundred of Salford and the Court of Record for the Trial of Civil Actions within the City of Manchester had been found of great utility, and that their utility would be greatly increased by the amalgamation of the two courts and by the extension of the powers theretofore possessed by them, enacted that the two courts should be amalgamated, and the amalgamated court should be called "The Court of Record for the Hundred of Salford, in the County of Lancaster." It also recited that the Right Honourable William Philip, Earl of Sefton, and his ancestors, had long held, enjoyed, and exercised the dignity and office of steward for the hundred or wapentake of Salford, in the County Palatine of Lancaster, and further enacted that Her Majesty's steward for the time being of the hundred or wapentake of Salford should be the high steward of the amalgamated court.

(*w*) See *Hallet* v. *Byrt* (1697), 5 Mod. Rep. 254. The Salford Hundred Court was one of the ancient Anglo-Saxon hundred courts, probably one of the oldest. Each hundred had its court, or "wapentac," "wapentake," "weapontake," so styled because the judge and suitors attended armed with their weapons (see also note (*m*), p. 214, *post*). The hundred of Salford was also called in course of time the "Wapentake of Salfordshire." The jurisdiction of the court was unlimited in amount until the reign of Edward I., when by the statute of Gloucester (1278) its jurisdiction was reduced to 40*s*., equivalent to about £40 or £50 of our money now. That continued to be the extent of its jurisdiction until by 9 & 10 Vict. c. cxxvi. (1846) it was raised to £50 over all the hundred except the borough of Manchester, and the court was constituted a "court of record for the hundred or wapentake of Salford, in the county of Lancaster."

(*x*) In 1838, by royal charter expressed in letters patent under the Great Seal of the United Kingdom, the right had been granted to the mayor, aldermen, and burgesses of the borough of Manchester to hold within the borough a court of record for the trial of civil actions before the mayor of the borough, and in 1853, by certain other letters patent under the Great Seal of the United Kingdom, the borough of Manchester was constituted the city of Manchester, and the mayor, aldermen, and burgesses of the borough of Manchester a body politic and corporate by the name and style of "The Mayor, Aldermen, and Citizens of Manchester, in the County of Lancaster," and by other Acts of Parliament, and particularly by the Manchester Court of Record Procedure Act, 1854 (17 & 18 Vict. c. 84), the powers and jurisdiction of the Court of Record of the City of Manchester were extended, and its practice and procedure simplified and otherwise improved.

(*a*) The Salford Hundred Court of Record Act, 1868 (31 & 32 Vict. c. cxxx.).

(*b*) *Ibid.*, s. 6; *Whitehead* v. *Butt* (1891), 7 T. L. R. 609; *Payne* v. *Hogg* [1900],

SECT. 5. Particular Courts.

whole damage does not exceed £50; actions of ejectment between landlord and tenant, provided the land possession of which is sought to be recovered is situate in the hundred, and the annual rent or value does not exceed £50, and no fine shall have been paid, reserved, or made payable; any action whatever (except actions for libel, slander, or for debauching the plaintiff's daughter or servant) when more than £50 is sought to be recovered, provided consent by both parties shall have been filed. The jurisdiction, however, has been cut down by being excluded in all cases within the boroughs of Oldham and Bury, and part of the borough of Bacup, in which the county court has jurisdiction (*c*) and in cases under £5 within the borough of Bolton in which the county court has jurisdiction (*d*), and in cases under £5 within the borough of Heywood in which the county court has jurisdiction (*e*), and in the like causes within the borough of Rochdale (*f*), and in cases under £10 within the borough of Middleton (*g*). The practice and procedure of the court is regulated by the Common Law Procedure Acts, 1852 (*h*) and 1854 (*i*). The provisions of the Summary Procedure Bills of Exchange Act, 1855 (*k*), have also been extended to this court (*l*).

Salford Hundred.

If on the trial of an issue the judge grants leave, a rule to set aside a verdict or nonsuit and to enter a verdict, or to enter a nonsuit, or to arrest the judgment, or for judgment *non obstante veredicto*, may be moved before the King's Bench Division (*m*). All powers, authorities, jurisdictions, and privileges of inferior courts of record of which a barrister of five years' standing is the judge are granted to and vested in the Salford Hundred Court (*n*).

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2 Q. B. 43, C. A The limits of the hundred are set out in s. 5 of the Salford Hundred Court of Record Act, 1868 (31 & 32 Vict. c. cxxx.) the hundred of Salford containing the following parishes: Bolton-le-Moors, Bury, Dean, Radcliffe, Wigan (township of Aspull only), Eccles, Flixton, Manchester, Prestwich-cum-Oldham, Ashton-under-Lyne, Middleton, and Rochdale; the borough of Salford; Stretford and Withington, which last is now part of the city of Manchester.

(*c*) By Order in Council 30th December, 1878 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 176), and the Oldham Corporation Act, 1886, s. 45, and the Bury Corporation Act, 1906, s. 6. As to Bacup, see Statutory Rules and Orders, 1909, No. 584, L, 19.

(*d*) By Order in Council 16th August, 1886 (*ibid.*, p. 179).

(*e*) By Order in Council 15th March, 1893 (*ibid.*, p. 182).

(*f*) By Order in Council 15th March, 1893 (*ibid.*, p. 184).

(*g*) By Order in Council, 28th July, 1906. As to objection to the jurisdiction, see *ibid.*, s. 7; *Chadwick* v. *Ball* (1885), 14 Q. B. D. 855, C. A., overruling *Oram* v. *Brearey* (1877), 2 Ex. D. 346; *Payne* v. *Hogg*, [1900] 2 Q. B. 43, C. A.

(*h*) 15 & 16 Vict. c. 76. The whole of this Act except ss. 1, 5, 9, 10, 18, 19, 21—24, 82, 97, 98, 100—116, 120—122, 146—167, 173, 182, 188, 189, 202, 217, 219, 220, 223—236, was extended to this court by Order in Council 28th February, 1855 (Statutory Rules and Orders Revised, Vol. I., Inferior Court, England, p. 171).

(*i*) 17 & 18 Vict. c. 125. The whole of this Act, with the rules thereunder, except ss. 2, 17, 75—77, 95, 97—105, and 107, was extended to this court by Order in Council 4th April, 1856 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 174).

(*k*) 18 & 19 Vict. c. 67.

(*l*) By Order in Council 4th April, 1856 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 175), and s. 117 of the Salford Hundred Court of Record Act, 1868 (31 & 32 Vict. c. cxxx.).

(*m*) Salford Hundred Court of Record Act, 1868 (31 & 32 Vict. c. cxxx.), s. 89.

(*n*) *Ibid.*, s 116.

The judge etc.

442. The offices of the court are in the city of Manchester. The number of writs in the year average about 16,000, and the judge (who is appointed by the Lord Chancellor and must be a barrister-at-law of at least ten years' standing (*o*)) holds a court six times a year at the Manchester Assize Court for the trial of civil actions. The jury are twelve in number, and as the court has power to try certain actions which cannot be tried in the county courts, and as most of the cases tried are jury cases, which, in the densely populated district over which the court's jurisdiction extends, the local county courts could not conveniently try owing to the large amount of other county court work they have to cope with, the utility of the Salford Hundred Court of Record is as great as was contemplated by the legislature when the amalgamated court was constituted in 1868 (*p*).

The judge has power to hear applications for rules to show cause in arrest of judgment, or for judgment *non obstante veredicto*, or for repleader, or for a new trial, or for entering verdicts or nonsuits pending in the court within twenty-one days after trial, and whether the court be sitting or not, either within or without the hundred (*q*).

The officers of the court are the registrar and the head bailiff, together with clerks and criers (*r*).

There is a table of court fees dated 6th May, 1895. There are three scales, one for claims not exceeding £5, one for claims not exceeding £20, and the other for claims exceeding £20.

(cxxxv.) *Salisbury.*

Salisbury.

443. By prescription the Bishop of Salisbury has a civil court in that city. The court has jurisdiction in mixed and personal actions up to any amount. It is doubtful whether the jurisdiction extended over the close as well as over the city, but since 1835 the jurisdiction extends over the whole of the borough (*s*). There is a recorder of Salisbury, who is, it would seem, judge of the court (*t*). The practice was similar to that of the Court of King's Bench before 1852. There was formerly a book of the practice of the court, but it had been lost before 1834. The costs are stated to be the same as those in the Court of Common Pleas before 1852. The court has been in abeyance since 1846, and no trial has taken place since 1816. The officer of the court is called the prothonotary,

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(*o*) Salford Hundred Court of Record Act (31 & 32 Vict. c. cxxx.), s. 14. The judge may in case of his illness or unavoidable absence appoint in writing a deputy judge, being a barrister-at-law of five years' standing (*ibid.*, s. 17).

(*p*) This account of the Salford Hundred Court of Record was kindly supplied by the late H. G. Shee, Esq., K.C., who was then the judge of the court.

(*q*) Salford Hundred Court of Record Act, 1868 (31 & 32 Vict. c. cxxx.), s. 20.

(*r*) *Ibid.*, s. 22. Where a clerk employed in the office of the court directed an interpleader issue to be tried before himself, it was held that a party who was ignorant of the clerk's want of jurisdiction was not bound by the proceedings (*Nathan* v. *Bottomley* (1903), 19 T. L. R. 421).

(*s*) Municipal Corporations Acts, 1835 (5 & 6 Will. 4, c. 76), s. 118, and 1882 (45 & 46 Vict. c. 50), s. 183.

(*t*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See definition of "borough civil court" in s. 7 (1). The judge of the court was formerly the bishop's bailiff.

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and is appointed by the bishop. The bishop has also a court leet (*a*) and view of frankpledge (*b*).

(cxxxvi.) *Sandwich.*

Sandwich.

444. The Sandwich Court of Record (*c*) has jurisdiction in all actions, real, mixed, and personal, up to any amount. The court is directed by the Cinque Ports charter to be held on the accustomed days, that is every three weeks. There is a recorder of Sandwich, who is judge of the court (*d*). The costs allowed were the same as those in the Court of King's Bench before 1852. The court has been in abeyance for many years (*e*).

(cxxxvii.) *Scarborough.*

Scarborough.

445. The Scarborough Court of Pleas (*f*) has jurisdiction in mixed and personal actions up to any amount. The court is directed to be held every month. The recorder is judge of the court (*g*). The practice is regulated by the Common Law Procedure Acts, 1852 (*h*), 1854 (*i*), and 1860 (*k*), and the rules made thereunder. All the provisions of the schedule to the Borough and Local Courts of Record Act, 1872 (*l*), have also been extended to this court (*m*). There are no special rules. This court is still in use (*n*). The

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(*a*) See p. 215, *post*.

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1337—1344.

(*c*) The corporation of Sandwich have a charter dated 13th October, 11 Car. 2. This charter is supposed to have been renounced after the Revolution. The present practice of the corporation is understood to be in accordance with immemorial usage. The court of record is claimed by the corporation to be a franchise by prescription. The general charter of the Cinque Ports granted by Charles II., 23rd December, 1668 (printed in Jeake, Charters of the Cinque Ports, 120), also contains a grant to the corporation of Sandwich of a court of record. This charter contains *inspeximus* and confirmation of previous charters of 1 Eliz. (granted 8th March, 1559) and 43 Eliz. (granted 26th January, 1601).

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1043—1050.

(*f*) This court is held under the authority of a charter of Edward III, granted 22nd November, 1356, inspected, exemplified, and confirmed by 8 Car. 1, granted 4th May, 1632.

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*h*) 15 & 16 Vict. c. 76.

(*i*) 17 & 18 Vict. c. 125. The whole of the provisions of the Common Law Procedure Acts, 1852 and 1854, and the rules thereunder, were extended to this court by Order in Council of 6th June, 1859 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 187).

(*k*) 23 & 24 Vict. c. 126. All the provisions of this Act and the rules thereunder were extended to this court by Order in Council of 6th January, 1862 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 188).

(*l*) 35 & 36 Vict. c. 86.

(*m*) By Order in Council of 26th June, 1873 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 189).

(*n*) Fourteen actions were pending or commenced in 1905. No trial, however, took place in that year (Civil Judicial Statistics, 1905, Parliamentary Paper, 1907 [C. 3477], p. 165).

corporation are lords of the manor of Scarborough and Falsgrave. The bailiffs hold the usual manor courts (*o*).

(cxxxviii.) *Shaftesbury.*

Shaftesbury.

446. The Shaftesbury Court of Record (*p*) has jurisdiction in personal actions to the extent of £10 debt or damages. The court is directed to be held weekly before the mayor and capital burgesses or three of them, of whom the mayor or the ex-mayor must be one. There is no recorder of Shaftesbury. The practice of the court is almost exactly similar to that of the superior courts of common law before 1852. The court has practically been in abeyance since the end of the eighteenth century, and was discontinued in 1842 on account of expense. In 1834 a table of fees and of solicitors' costs was in existence.

The corporation have also a court leet (*q*) and view of frankpledge (*r*).

(cxxxix.) *Shrewsbury.*

Shrewsbury.

447. The Shrewsbury Court of Record (*s*) has jurisdiction in all actions, real, mixed, and personal, up to any amount. The court is directed to be held every week. There is a recorder of Shrewsbury, who is consequently judge of the court (*t*). The practice is similar to that of the superior courts of common law before 1852. The last court was held in 1879.

The corporation have also a court leet (*a*) and view of frankpledge (*b*) as well as (*c*) a court of pie poudre (*d*).

(cxl.) *Southampton.*

Southampton.

448. The Southampton Court of Record or Court of Pleas (*e*), also called the common court of the town, has jurisdiction in all actions, real, mixed, and personal, up to any amount. The court is directed to be held weekly for personal actions, and once a fortnight for pleas of land. The recorder is the judge (*f*). There are no

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(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1713—1721; and information kindly given by the town clerk. See p. 215, *post.*

(*p*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 17 Car. 2, Part II., No. 19).

(*q*) See p. 215, *post.*

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1351—1354; and information kindly given by the town clerk.

(*s*) 14 Car. 1, Pat. Rol., Part XI., No. 3.

(*t*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante.*

(*a*) See p. 215, *post.*

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 2011—2017; and information kindly given by the town clerk.

(*c*) Selden Society, Vol. XXIII., p. xv.

(*d*) See p. 136, *ante.*

(*e*) 16 Car. 1, Pat. Rol., Part XX., No. 7, 12th June, 1640. The jurisdiction was originally conferred by charter of 2 Hen. 4 (Wilks, Hampshire, Vol. II., p. 313).

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante.*

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written or printed rules of practice, but the practice is similar to that of the superior courts of common law before 1852.

The mayor, recorder, bailiffs, aldermen, and sheriff (the mayor, recorder, or senior alderman to be one) are also authorised to hold a court for the government of the orphans of burgesses and inhabitants (*g*).

The corporation (*h*) also possesses a court of pie poudre (*i*) and a court leet (*k*) and view of frankpledge.

(cxli.) *South Molton.*

South Molton.

449. Under charters of Queen Elizabeth (*l*) and Charles II. (*m*) the South Molton Court of Record has jurisdiction in personal actions up to £50. The court is directed to be held from three weeks to three weeks. There is a recorder of South Molton, who is consequently judge of the court (*n*). This court has been in abeyance for many years (*o*).

(cxlii.) *Southwark.*

Southwark.

450. The corporation of London under the charters granting to them the town and borough of Southwark have a court entitled "The Court of Record of the Liberty of the Mayor and Commonalty and Citizens of the City of London of their Town and Borough of Southwark" (*p*). This court has jurisdiction in personal actions to any amount arising within the borough of Southwark, or the King's manor of Southwark, or the Guildable Manor, or the Great Liberty Manor. The former liberty of the Clink is excluded from the jurisdiction. The provisions of the Municipal Corporations Act, 1882 (*q*), do not apply to Southwark. The court is to be held every week before the Steward of Southwark or his deputy. The stewardship of Southwark is an office held by the Recorder of London. The procedure is similar to that of the superior courts of common law before 1852. This court has been in abeyance for some years.

(*g*) This court is held under the authority of the charter of Charles I. (see note (*e*) on p. 201, *ante*). Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 871—884.

(*h*) Under a charter of Edward IV. (Rot. Cart., 1 Edw. 4, Part II., No. 11). The charter of Charles I. (see note (*e*) on p. 201, *ante*) recites and confirms a charter of Henry VI. (30 Hen. 6, Rot. Cart., 27-39 Hen. 6, No. 27, 12th October, 1434), which contains the grant of a court of admiralty (see p. 105, *ante*) to the corporation of Southampton. The mayor has a silver oar as insignia and is entitled to receive the first call from the commanding officer of foreign ships of war visiting the port.

(*i*) See p. 136, *ante*.

(*k*) See p. 215, *post*.

(*l*) Pat. Rol., 32 Eliz., Part XXII., granted 9th May, 1590.

(*m*) 36 Car. 2, granted 24th December, 1684. This charter increased the jurisdiction from £40 to £50.

(*n*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 613, 614.

(*p*) 1 Edw. 3 (6th March, 1327) (Maitland, History of London, p. 122); 2 Edw. 4 (9th November, 1462) (*ibid.*, p. 116, ed. 1739); 4 Edw. 6 (23rd April, 1550) (*ibid.*, p. 144).

(*q*) 45 & 46 Vict. c. 50.

The corporation had a court of pie poudre (*r*), but this is now obsolete.

The charters also grant courts leet (*s*) and views of frankpledge to the corporation, which should be held separately for the three manors before mentioned (*t*).

Quarter sessions for the borough of Southwark are still held. The judges of the court are the lord mayor, the aldermen who have passed the chair, and the recorder, of whom the lord mayor or in his absence an alderman who has passed the chair, two other aldermen who have passed the chair, and the recorder must be present. The proceedings are now purely formal (*a*).

(cxliii.) *Southwold.*

Southwold.

451. The Southwold Court of Record (*b*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held weekly before the bailiffs and the chief steward or his deputy, but fell into abeyance about the middle of the eighteenth century (*c*).

The corporation have also a grant of a court of admiralty (*d*), and there is a court leet (*e*), held once a year before the bailiffs and the chief steward (*f*).

(cxliv.) *Stafford.*

Stafford.

452. The Stafford Court of Record (*g*) has jurisdiction in actions of debt and trespass up to any amount. The court is directed to be held before the mayor or his deputy (the recorder or deputy recorder), and the aldermen or any two of them, the recorder or deputy recorder being one. There is now no recorder of Stafford. This court had been in abeyance for fifty or sixty years in 1834.

The corporation have also a court leet (*h*) and view of frankpledge (*i*).

(cxlv.) *Stamford.*

Stamford.

453. The Stamford Court of Record (*k*) has jurisdiction in personal actions up to £40. The court is directed to be held weekly. There

(*r*) See p. 136, *ante*.

(*s*) See p. 215, *post*.

(*t*) Appendix to Report of the Municipal Corporations Commissioners, 1837 (London and Southwark), Parliamentary Paper, 1837 (60), pp. 3, 18, 19, 20, 132. Information kindly given by the high bailiff.

(*a*) Royal Commission, 1893, Statement as to the Origin of the Position, Powers, Duties and Finance of the Corporation of London, pp. 76, 77.

(*b*) This court is held under the authority of a charter of William and Mary, granted 23rd January, 1690. This charter confirms an earlier charter of 20 Hen. 7, granted 10th June, 1505, which gave these franchises to the corporation.

(*c*) Books of records of this court from 1675 to 1758 are in existence.

(*d*) See p. 105, *ante*.

(*e*) See p. 215, *post*.

(*f*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2513—2518. Information kindly given by the town clerk.

(*g*) This court is held under the authority of a charter of George IV. (Pat. Rol., 8 Geo. 4, Part XI., No. 11).

(*h*) See p. 215, *post*.

(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 2025—2027.

(*k*) This court is held under the authority of a charter of Charles II.

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is a recorder of Stamford, who is consequently judge of the court (*l*). The practice and procedure are as in the superior courts of common law before 1852. Costs are regulated by a table fixed in 1741 (*m*).

(cxlvi.) *Stannaries Court.*

Stannaries Court.

454. The Court of the Stannaries of Cornwall and Devon originated by virtue of a privilege granted to the workers in the tin mines in those counties to sue and be sued only in their own courts (*n*). The courts, which were courts of record, were originally distinct for the several stannaries, but in 1836 were amalgamated into one Court of the Vice-Warden for all the Stannaries (*o*). Until the establishment of the modern county courts the tin-workers could not be sued except in the Stannaries Court in respect of matters arising within the stannaries, but after that event the county court of the district had a concurrent jurisdiction (*p*).

The Lord Warden of the Stannaries was appointed by the Duke of Cornwall, and he appointed a Vice-Warden before whom the court was held. An appeal lay from the Vice-Warden to the Lord Warden, but by the Judicature Act, 1873, all the judicial jurisdiction and powers of the Lord Warden were transferred to the Court of Appeal (*q*), and as from the 1st January, 1897, the Court of the Vice-Warden of the Stannaries ceased to exist, except as to then pending proceedings, and all the jurisdiction and powers of the court were vested in such of the county courts as the Lord Chancellor might by order direct (*r*). The county courts of Cornwall were appointed the courts to exercise the transferred jurisdiction and powers (*s*), and rules have been made for the purpose of regulating the procedure in cases brought under the stannaries jurisdiction (*t*).

(cxlvii.) *Stockport.*

Stockport.

455. The Stockport (*a*) Court of Portemainemote has jurisdiction in actions of debt and battery, and of wounding without shedding of blood.

(Pat. Rol., 16 Car. 2, Part II., No. 14), granted 19th February, 1664. A charter, 1 Jac. 2, 3rd March, 1685, is said to be the governing charter. Its terms as to the court are the same as those of the charter of Charles II. It does not seem to have been enrolled.

(*l*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*m*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2527—2533.

(*n*) See 4 Co. Inst. 232; 3 Bl. Com. 80; stat. (1640) 16 Car. 1, c. 15.

(*o*) Stannaries Act, 1836 (6 & 7 Will. 4, c. 106), as amended by the Stannaries Act, 1839 (2 & 3 Vict. c. 58).

(*p*) County Courts Act, 1846 (9 & 10 Vict. c. 95), s. 141.

(*q*) 36 & 37 Vict. c. 66, s. 18; and see *Re West Devon Great Consols Mine* (1884), 27 Ch. D. 106.

(*r*) Stannaries Court (Abolition) Act, 1896 (59 & 60 Vict. c. 45), s. 1. See title COUNTY COURTS, Vol. VIII., p. 686.

(*s*) Order dated 16th December, 1896.

(*t*) See County Courts (Stannaries Jurisdiction) Rules, 1897, now merged in the County Court Rules, Ord. 51, rr. 1—28. For the jurisdiction as to companies, see title COMPANIES, Vol. V., and for the jurisdiction as to special mining usages and rights, see title MINES, MINERALS AND QUARRIES.

(*a*) This court is held under the authority of a charter granted by Robert de

There is also a court leet (*b*) and view of frankpledge, and a court baron (*c*), held twice a year (*d*).

(cxlviii.) *Stratford-on-Avon.*

Stratford-on-Avon.

456. The Stratford-on-Avon Court of Record (*e*) has jurisdiction in personal actions up to the amount of £40. The court was directed to be held weekly before the mayor and the steward of the court of record, but had fallen into abeyance some considerable time before 1833 (*f*).

(cxlix.) *Sudbury.*

Sudbury.

457. The Sudbury Court of Record (*g*) has jurisdiction in personal actions up to the amount of £20. There is a recorder of Sudbury (*h*), who is the judge of the court, which has long been in abeyance, and nothing appears to be known of its practice and procedure.

(cl.) *Swansea.*

Swansea.

458. The corporation of Swansea claim to be a corporation by prescription, and that they have never accepted or acted on their charters (*i*), and that they have a prescriptive court of record or court of pleas with jurisdiction in all actions, real, mixed, and personal, to any amount. There is a recorder of Swansea, who is judge of the court (*k*). Solicitors have audience. The practice and procedure are by writ of summons, declaration and plea, or judgment in default and trial.

The corporation have a court of pie poudre (*l*) either by prescription or under a charter of James I. (*m*). There is also a court baron (*n*).

Stockport. This charter grants that Stockport shall be a free borough "*secundum cartam quam impetravi a domino Cestr.* It is not dated, but from the names of the witnesses it appears to have been granted between 1208 and 1226. A translation of this charter is printed in Earwaker, History of East Cheshire, Vol. I., p. 334.

(*b*) See p. 215, *post.*

(*c*) See p. 216, *post.*

(*d*) Report on Certain Boroughs, by T. J. Hogg, Parliamentary Paper, 1838 (686), p. 127.

(*e*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 16 Car. 2, Part II., No. 6).

(*f*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 119, 120.

(*g*) This court is held under the authority of a charter of Charles II. (16 Car 2, Pat. Rol., Part XIII., No. 1).

(*h*) Municipal Corporations Acts, 1835 (5 & 6 Will. 4, c. 76), s. 118, and 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante.*

(*i*) A charter of Oliver Cromwell, dated 20th February, 1655, grants a court of record to be held twice a week, with jurisdiction in all actions, real, mixed, and personal, to any amount. A charter of 1 Jac. 2, granted 28th March, 1685, grants a court of record to be held weekly with jurisdiction in all causes not exceeding £40 in amount.

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante.*

(*l*) See p. 136, *ante.*

(*m*) Appendix to Report of the Municipal Corporations Commissioners, 1835. Part I., pp. 383—393; and information kindly given by the town clerk.

(*n*) See p. 216, *post.*

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(cli.) *Tamworth.*

Tamworth.

459. The Tamworth Court of Record (*o*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held before the bailiffs, the steward, the recorder and the town clerk, or any two of them, of whom one of the bailiffs must be one. The town clerk is the prothonotary of the court. There is now no recorder of Tamworth (*p*). The court had long been in abeyance in 1834.

There was a court of pie poudre (*q*), and the corporation have a court leet (*r*) and court baron (*s*) under their charter (*t*).

(clii.) *Tenby.*

Tenby.

460. The Tenby Court of Record, or Mayor's Court (*u*), has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every four weeks before the mayor or his deputy; it was also held every fortnight for the recovery of debts under 40*s*. The practice was similar to that of the Court of Common Pleas before 1852; there was also a custom to compel appearance by *distringas*. The court has been in abeyance since the introduction of county courts in 1846.

The corporation have also a hundred court with view of frankpledge to be held twice yearly (*v*).

(cliii.) *Tenterden.*

Tenterden.

461. The Court of Record of Tenterden (*w*) has jurisdiction in all actions, real, mixed, and personal, to any amount. Under the charter of Elizabeth the court is directed to be held every fortnight. There seems to be no very settled form of procedure. There is a recorder of Tenterden, who is consequently judge of the court (*x*). The charter authorises the mayor and jurats to hold a court leet (*y*) and view of frankpledge twice a year (*a*).

(*o*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 16 Car. 2, Part IX., No. 8).

(*p*) There was a recorder of Tamworth at the time of the passing of the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76).

(*p*) See p. 134, *ante*.

(*q*) See p. 136, *post*.

(*r*) See p. 215, *post*.

(*s*) See p. 216, *post*.

(*t*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 2039, 2040; and information kindly given by the town clerk.

(*u*) This court is held under the authority of a charter of Henry IV. (Pat. Rol., 3 Hen. 4, memb. 2), granted 22nd August, 1402. This charter is an *inspeximus* and confirmation of letters patent dated 6th February, 1 Ric. II., which inspected and confirmed earlier charters beginning with one of William de Valencia, Earl of Pembroke (1265-1296).

(*v*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 401—409.

(*w*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol., 42 Eliz., Part IX.), and of the general charter of the Cinque Ports granted by Charles II. on 23rd December, 1668 (printed in Jeake, Charters of the Cinque Ports).

(*x*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*y*) See p. 215, *post*.

(*a*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1062—1067.

(cliv.) *Tewkesbury.*

Tewkesbury.

462. The Tewkesbury Court of Record (*b*) has jurisdiction in personal actions up to the amount of £50. The court is directed to be held weekly. The recorder of Tewkesbury is judge of the court (*c*). If the defendant does not appear to the writ of summons the plaintiff may enter an appearance for him. In general the proceedings are as at common law before 1852. This court fell into abeyance about 1835.

The corporation have also a court leet (*d*), to be held once a year (*e*).

(clv.) *Thetford.*

Thetford.

463. The Thetford Court of Record (*f*) has jurisdiction in mixed and personal actions up to the amount of £50. The court is directed to be held weekly. The recorder of Thetford is judge of the court (*g*). The practice and procedure is similar to that of the superior courts of common law before 1852. This court fell into abeyance about 1780, but about 1830 a mandamus issued to the corporation and recorder to hold the court, which was done for some years, after which it again fell into abeyance (*h*).

(clvi.) *Tiverton.*

Tiverton.

464. The Tiverton Court of Record (*i*) has jurisdiction in personal actions up to the amount of £100. The court is directed to be held from fourteen days to fourteen days. There is a recorder of Tiverton, who is consequently judge of the court (*k*). The practice and procedure is similar to that of the Court of Common Pleas before 1852. A book of rules of the court was in existence in 1833. A table of fees is also in existence made before 1838. The court has been in abeyance since 1834.

The Court of the Hundred, Manor, and Borough of Tiverton has also jurisdiction within the borough (*l*).

(clvii.) *Great Torrington.*

Great Torrington.

465. The Torrington Court of Record (*m*) has jurisdiction in all actions, real, mixed, and personal, up to the amount of £50. The

(*b*) This court is held under the authority of a charter of William III. (Pat. Rol., 10 Will. 3, Part II., No. 1).

(*c*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*d*) See p. 215, *post*.

(*e*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 125, 126; and information kindly given by the town clerk.

(*f*) This court is held under the authority of a charter of William and Mary (1693).

(*g*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*h*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2541—2544.

(*i*) 11 Geo. 1, Pat. Rol., Part II., No. 31, granted 4th December, 1737.

(*k*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*l*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 625—627; and information kindly given by the town clerk.

(*m*) This court is held under the authority of charters of Philip and Mary and

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court is directed to be held every three weeks before the mayor or his deputy, two of the aldermen, two of the capital burgesses, and the steward or common clerk (town clerk) or his deputy. There are no rules of this court in existence, and the practice is unknown. The court fell into abeyance about 1783.

The corporation have also a court leet (*n*) and view of frankpledge, both of which had been in abeyance long before 1833 (*o*).

(clviii.) *Totnes.*

Totnes.

466. The Totnes Court of Record, or Mayor's Law Court (*p*), is directed to be held before the mayor. There are no written rules of the court in existence, and the practice is unknown. The court has been in abeyance since 1835. There is also a court leet (*q*) held once a year before the town clerk as steward (*r*).

(clix.) *Truro.*

Truro.

467. The Truro Court of Record (*s*) has jurisdiction in personal actions to any amount. The court is directed to be held weekly before the mayor or his deputy and two of the aldermen or capital burgesses. No records or rules of this court are in existence, and it had gone into abeyance before 1833.

The charter also grants a court leet (*a*) and view of frankpledge to be held twice a year before the mayor or his deputy and a court of pie poudre (*b*).

(clx.) *Wallingford.*

Wallingford.

468. The Wallingford Court of Record (*c*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held before the mayor, town clerk (recorder), and bailiffs, of whom the recorder is the only one not of the quorum. There is now no recorder of Wallingford (*d*). The court appears to have gone into abeyance between 1835 and 1846. The charter also grants to the corporation a court leet (*e*) and view of frankpledge (*f*).

James I. (Pat. Rol., 1 & 2 Phil. & Mar., Part XII., granted 20th September, 1554; Pat. Rol., 15 Jac. 1, Part III., No. 10, granted 22nd December, 1617).

(*n*) See p. 215, *post.*

(*o*) Both these courts were granted by the charter of Philip and Mary (see note (*m*), p. 207, *ante.* Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 633—635.

(*p*) This court was held under the authority of a charter of Queen Elizabeth (Pat. Rol., 38 Eliz., Part XII.), granted 1st September, 1596.

(*q*) See p. 215, *post.*

(*r*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 641, 642; and information kindly given by the town clerk.

(*s*) This court was held under the authority of a charter of Queen Elizabeth (Pat. Rol., 31 Eliz., Part XIII.), granted 20th June, 1589.

(*a*) See p. 215, *post.*

(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 655—657. See p. 136, *ante.*

(*c*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 15 Car. 2, Part VI., No. 1).

(*d*) There was a recorder of Wallingford at the time of the passing of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50).

(*e*) See p. 215, *post.*

(*f*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 133, 134.

(clxi.) *Walsall.*

Walsall.

469. The Walsall Court of Record (*g*) has jurisdiction in actions of contract or trespass over 40*s.*, and not exceeding £20 in amount; it is directed to be held monthly. There is a recorder of Walsall, who is judge of the court (*h*). The jurisdiction, in consequence of the judge being a barrister of five years' standing, is extended to actions of ejectment up to £20 (*i*). The practice and procedure are as in the superior courts of common law before 1852. The costs are regulated by custom, and are not more than half those allowed in the superior courts before 1852. The court has been in abeyance since about 1846 (*k*).

(clxii.) *Warwick.*

Warwick.

470. The Warwick Court of Record (*l*) has jurisdiction in personal actions up to £40. It is directed to be held weekly, and the recorder of Warwick is judge (*m*). The practice and procedure, and also the costs, were as those in the superior courts of common law before 1852. The court has been in abeyance since about 1846.

The charter also grants a court leet (*n*), which is still held for the purpose of electing officers (*o*).

(clxiii.) *Wells.*

Wells.

471. The Wells Court of Record (*p*) has jurisdiction in personal actions to any amount. The court is directed to be held from three weeks to three weeks. The recorder of Wells is judge of the court (*q*). This court had been in abeyance since about 1630, when it was revived by mandamus in 1836 (*r*). The practice and procedure were then unknown. After this the court fell again into abeyance in 1846. Rules were made on 7th January, 1841. No table of fees is in existence.

There is also an ancient prescriptive court for the trial of pleas between burgess and burgess, which originally belonged to the Bishop of Bath and Wells, and was granted by him to the

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(*g*) This court is held under the authority of a charter of Charles I. (Pat. Rol., 3 Car. 1, Part XXXVII., No. 6).

(*h*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*i*) Municipal Corporations Acts, 1835 (5 & 6 Will. 4, c. 76), s. 118, and 1882 (45 & 46 Vict. c. 50), s. 183.

(*k*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 2045—2047; and information kindly given by the town clerk.

(*l*) This court is held under the authority of a charter of William and Mary (Pat. Rol., 5 Will. & Mar., Part III., No. 11), granted 18th March, 1694.

(*m*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*n*) See p. 215, *post*.

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 2057—2061; and information kindly given by the town clerk.

(*p*) This court is held under the authority of a charter of Queen Elizabeth (Pat. Rol., 31 Eliz., Part III.), granted 23rd July, 1589.

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*r*) *R.* v. *Wells Corporation* (1836), 4 Dowl. 562.

SECT. 5. Particular Courts.

corporation of Wells (*s*). This court has been in abeyance since the time of Charles I. The recorder of Wells is judge of this court also (*t*).

(clxiv.) *Welshpool.*

Welshpool.

472. The Welshpool Court of Record (*a*) has jurisdiction in personal actions to any amount. The court is directed to be held every fortnight before the high steward and bailiffs. The court has long been in abeyance.

The charter of James I. also granted to the corporation a court of pie poudre (*b*). There is also a court leet (*c*), held once a year before the deputy steward (*d*).

(clxv.) *Wenlock, Much.*

Much Wenlock.

473. The Wenlock or Much Wenlock Court of Record (*e*) has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held every alternate week. There is a recorder of Wenlock, who is consequently judge of the court (*f*). The proceedings are directed to be the same as those used in the King's courts. There is a table of fees. The court has been in abeyance for many years (*g*).

(clxvi.) *Weymouth.*

Weymouth.

474. The Weymouth and Melcombe Regis Court of Record (*h*) has jurisdiction in mixed and personal actions to any amount. The court is directed to be held from week to week before the mayor and bailiffs, or one of them. There is no recorder. The forms of procedure, process, pleading etc. are based on those of the superior courts of common law before 1852.

The corporation of Melcombe Regis have also a grant of a court of husting (*i*), to be held once in the week.

(*s*) *Temp.* John. The right to this court was challenged by *quo warranto* in 24 Eliz., but the corporation succeeded in proving their right to the franchise.

(*t*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1365—1372 ; and information kindly given by the town clerk.

(*a*) This court is held under the authority of a charter of James I. (1614-5).

(*b*) See p. 136, *ante*.

(*c*) See p. 215, *post*.

(*d*) Report on Certain Boroughs, by T. J. Hogg, Parliamentary Paper, 1838 (686), pp. 139—143.

(*e*) This court is held under the authority of a charter of Charles I. (Pat. Rol., 7 Car. 1, Part VI., No. 11). The court was first established by a charter of 8 Edw. 4.

(*f*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*g*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 2075—2078.

(*h*) This court is held under the authority of a charter of George III. (Pat. Rol., 44 Geo. 3, Part V., No. 1), granted 25th May, 1804. The jurisdiction was first granted by a charter dated 27th May, 8 Edw. 1, 1280.

(*i*) This court is held under the authority of a charter of Edward I. (Pat. Rol., 8 Edw. 1, memb. 9, No. 52). This charter granted to the burgesses of Melecumbe all the liberties granted to the citizens of London. See p. 176, *ante*.

There are two court leets (*k*), one for the manor of Weymouth (*l*) and one for that of Melcombe Regis (*m*).

The corporation as successors of the corporation of Melcombe Regis (*n*) have a court of pie poudre (*o*).

(clxvii.) *Wigan.*

Wigan.

475. The Wigan Court of Pleas (*p*) had jurisdiction in personal actions to any amount. The recorder of Wigan is judge of the court (*q*). It fell into abeyance in 1776.

The charter also grants a court of pie poudre (*r*).

The corporation have a court leet (*s*) and view of frankpledge, held once a year at Michaelmas. A charter of Edward III. (*t*) also grants a court baron (*a*) and a court leet and view of frankpledge to the parson of Wigan (*b*).

(clxviii.) *Winchester City.*

Winchester Town Court.

476. The court of the mayor, recorder, and bailiffs of Winchester (*c*) has jurisdiction in all actions, real, mixed and personal, to any amount. The court is commonly called the Town Court. The court is directed to be held twice a week. The recorder of Winchester is judge (*d*). The practice seems to be based on that of the superior courts of common law before 1852, but in 1833 the practice was described as extremely irregular. The court appears to have originally been a court of husting based on that of London (*e*).

(*k*) See p. 215, *post*.

(*l*) First granted in 1252 by a charter of the prior of the church of St. Swithin, Winchester, exemplified by letters patent dated 10th February, 41 Edw. 3.

(*m*) A charter of Queen Elizabeth (Pat. Rol., 40 Eliz., Part VII., granted 6th May, 1598) confirmed to the royal demesne of Weymouth its exemption (see p. 90, *ante*) from the jurisdiction of the Admiral of England (Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 1383—1388). This exemption, though abolished by statute (Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 108), may have some effect as giving a titular admiralty jurisdiction to the mayor.

(*n*) Selden Society Publications, Vol. XXIII., p. xv.

(*o*) See p. 136, *ante*.

(*p*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 14 Car. 2, Part XVIII., No. 5), granted 16th May, 1662.

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*r*) See p. 136, *ante*.

(*s*) See p. 215, *post*.

(*t*) Rot. Cart., 24 Edw. 3, No. 7.

(*a*) See p. 216, *post*.

(*b*) Report on Certain Boroughs, by T. J. Hogg, Parliamentary Paper, 1838 (686), pp. 151—158.

(*c*) This court is held under the authority of a charter of Queen Elizabeth, granted 23rd January, 1588; a translation is printed in Milner's History of Winchester, Vol. II., p. 298. This town court existed from time immemorial. The right of the citizens to plead only within their own walls is referred to in a charter of 1 Ric. 1, printed in Milner's History of Winchester, Vol. II., p. 296.

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*e*) See note (*d*), p. 176, *ante*.

SECT. 5. Particular Courts.

The charter also granted a court of pie poudre (*f*), and a court of the Clerk of the Market (*g*), to be held before the mayor, and confirms to the corporation a boroughmote court, to be held twice a year in the accustomed manner. A court leet (*h*) and view of frankpledge, to be kept every year on the days accustomed, was also granted (*i*).

There was an ancient Court of the Staple at Winchester (*k*).

(clxix.) *The Bishop's Liberty of the Soke of Winchester.*

Cheney Court of Winchester.

477. By prescription the Cheney (or Cheyney) (*l*) Court of the Bishop of Winchester has jurisdiction over a wide area, comprising the Soke of Winchester, but not the city, and extending over 195 parishes, tithings, and places (*m*). The bishop was judge of the court by his deputy, usually the chancellor. The court has jurisdiction in all actions, real, mixed, and personal, to any amount. The court fell into disuse on the introduction of county courts in 1846, but appears to have transacted nominal business as late as 1869 (*n*).

(clxx.) *Windsor.*

Windsor.

478. The Windsor Record Court (*o*) has jurisdiction in personal actions to the amount of 40*s.*, but as there is a recorder of Windsor, who is consequently judge of the court (*p*), who must be a barrister of five years' standing, the jurisdiction is extended to £20 in personal actions, and to actions of ejectment where the rent of the premises sought to be recovered does not exceed £20 and no fine is reserved by the lease (*q*). The court is directed to be held weekly. It had fallen into abeyance long before 1833.

The charter also granted a court of pie poudre (*r*).

There is a court of the Clerk of the Market (*a*), held before the mayor (*b*).

(clxxi.) *Worcester.*

Worcester.

479. The Worcester Court of Record, or Court of Pleas (*c*), has jurisdiction within the city, suburbs, liberties, and precincts

(*f*) See p. 136, *ante*.
(*g*) See p. 137, *ante*.
(*h*) See p. 215, *post*.
(*i*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part II., pp. 895—903. Information kindly given by Alderman Jacob.
(*k*) Statute of the Staple (27 Edw. 3, stat. 2, c. 19). See p. 137, *ante*.
(*l*) This name has not been satisfactorily explained. The court was held in the close.
(*m*) A list of these is given in Hampshire Repository, Vol. II., pp. 306, 307.
(*n*) Woodward, History of Hampshire, Vol. I., p. 93, n. (1).
(*o*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 16 Car. 2, Part II., No. 13).
(*p*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.
(*q*) Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 118. This jurisdiction was continued by Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 183.
(*r*) See p. 136, *ante*.
(*a*) See p. 137, *ante*.
(*b*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part IV., pp. 2932—2934.
(*c*) This court is held under the authority of a charter of James I. (Pat. Rol.,

thereof in all actions, real, mixed, and personal, to any amount. The court is directed to be held weekly. There is a recorder of Worcester, who is judge of the court (*d*). In 1856 the jurisdiction of the court was excluded in all personal actions in which the county court has jurisdiction up to £20, and in ejectments where the rent of the premises sought to be recovered does not exceed £50 (*e*).

The practice and procedure of the court are regulated by the Common Law Procedure Acts, 1852 (*f*) and 1854 (*g*), and the rules thereunder (*h*). All the provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*i*), have been extended to this court (*k*). No plaints have been entered in this court since 1900 (*l*). There is a scale of fees and costs made and approved in 1839.

The charter also granted a court of pie poudre (*m*) and a court leet (*n*) and view of frankpledge (*o*).

(clxxii.) *York.*

480. The York Sheriff's Court of Pleas, or York Court of Record (*p*), as it is now called, has jurisdiction in all actions, real, mixed, and personal, to any amount. The court is directed to be held weekly. There is a recorder of York, who is consequently judge of the court (*q*). The jurisdiction of the court is excluded in cases up to £10 in which the county court has jurisdiction (*r*). York.

The practice and procedure are regulated by the Common Law Procedure Acts, 1852 (*a*), 1854 (*b*), and 1860 (*c*). The whole of the

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19 Jac. 1, Part VII., No. 1), granted 2nd October, 1622. The clause granting the jurisdiction is printed in a report by the Town Clerk of Worcester upon the jurisdiction and procedure of the Court of Pleas of the City of Worcester (1889). The franchise was first granted by a charter of 1 & 2 Phil. & Mar., dated 12th April, 1554.

(*d*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*e*) By Order in Council of 28th July, 1856 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 192).

(*f*) 15 & 16 Vict. c. 76.

(*g*) 17 & 18 Vict. c. 125.

(*h*) By Order in Council of 28th July, 1856 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 190).

(*i*) 18 & 19 Vict. c. 67.

(*k*) By Order in Council of 28th July, 1856 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 191).

(*l*) Civil Judicial Statistics, 1900—1905.

(*m*) See p. 136, *ante*.

(*n*) See p. 215, *post*.

(*o*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part I., pp. 153—156. Information kindly given by the town clerk.

(*p*) This court is held under the authority of a charter of Charles II. (Pat. Rol., 16 Car. 2, Part XV., No. 8). The franchise was originally granted by a charter of 19 Ric. 2, Rot. Cart. 18 & 19 Ric. 2, No. 1, granted 18th May, 1396.

(*q*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 175, 176. See p. 134, *ante*.

(*r*) By Order in Council of 17th May, 1890 (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 195).

(*a*) 15 & 16 Vict. c. 76.

(*b*) 17 & 18 Vict. c. 125.

(*c*) 23 & 24 Vict. c. 126.

SECT. 5. Particular Courts.

provisions of the Summary Procedure on Bills of Exchange Act, 1855 (*d*), and of the schedule to the Borough and Local Courts of Record Act, 1872 (*e*), have also been extended to this court (*f*). The court is still in use, but no plaints appear to have been entered since 1903 (*g*).

The corporation have also a court of husting (*h*) for proceedings in lieu of fines and recoveries. This court fell into abeyance about the middle of the nineteenth century.

The charter also granted a court of pie poudre (*i*).

There are also a court of the Clerk of the Market (*j*), a court of Guildhall, and a court of Conservancy of the rivers Ouse, Humber, Wharfe, Derwent, Aire, and Don, both in the city and county of York and in the county of Lincoln (*k*). All these courts are to be held before the lord mayor.

There was an ancient Court of the Staple at York (*l*).

Part XVIII.—Hundred and Manorial Courts.

SECT. 1.—*Hundred Courts.*

Hundred courts.

481. The only existing jurisdiction of such hundred courts as have not been made courts of record is a civil jurisdiction in actions in which less than 40*s.* is claimed in cases where the county court has not jurisdiction (*m*).

(*d*) 18 & 19 Vict. c. 67.

(*e*) 35 & 36 Vict. c. 86.

(*f*) By Order in Council of 9th March, 1854, the whole of the provisions of the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), were extended to this court (Statutory Rules and Orders Revised, Vol. VI., Inferior Court, England, p. 193), and by Order in Council of 26th June, 1873, the whole of the provisions of the Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), and of the Borough and Local Courts of Record Act, 1872 (35 & 36 Vict. c. 86), as well as ss. 1, 3—35, 37—67, 78—87, 89, 91—93, and 96 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), and ss. 1—11, 19—21, 28—31, 34—36, of the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126) (*ibid.*, p. 193).

(*g*) Civil Judicial Statistics, 1903—1905.

(*h*) See note (*d*) on p. 176, *ante*.

(*i*) See p. 136, *ante*.

(*j*) See p. 137, *ante*.

(*k*) Appendix to Report of the Municipal Corporations Commissioners, 1835, Part III., pp. 1737—1747; and information kindly supplied by the town clerk.

(*l*) Statute of the Staple (27 Edw. 3, stat. 2, c. 19), see p. 137, *ante*.

(*m*) Even prior to the Norman Conquest, besides the courts for the shire, there were also courts for the hundred or wapentake, and for the tu'n or township (See F. W. Maitland, Justice and Police). The former of these, the hundredgemot, after the Conquest became the hundred court, and was at first held every month, then every fortnight, and from 1234 A.D. once in three weeks (Pollock and Maitland, History of English Law, Vol. I., pp. 543—547).

At first the whole body of suitors were the judges, but afterwards this jurisdiction was vested in twelve men, who might either hold their office by choice for the particular occasion, or for life, or by hereditary succession (Stubbs, Constitutional History of England, Vol. I., p. 102).

The hundred court had both criminal and civil jurisdiction, but the criminal jurisdiction came to be exercised by way of the sheriff's tourn (see p. 118,

SECT. 2.—*Manorial Courts.*

SUB-SECT. 1.—*In General.*

The halimote.

482. The halimote, which was the court of the township in pre-Norman times, developed into the manorial courts, which were the court leet, the court baron, and the customary court of the manor(*n*).

SUB-SECT. 2.—*The Court Leet.*

Court leet.

483. The court leet, law day, or view of frankpledge (*o*), which exercised the criminal jurisdiction of the halimote, is a court of record (*p*) for the cognisance of criminal matters or pleas of the Crown, and necessarily belongs to the King, although a subject, usually the lord of a manor, may be and is entitled to the profits of the court (*q*). The power of holding the court and taking the profits thereof was a franchise appendant to manors, either by prescription or by a grant from the Crown under letters patent. This court was held twice a year, that is, within a month after Easter and a month after Michaelmas. It was originally held before the lord or his steward (*r*), but the usage is that it should be held before the steward. The jurisdiction extended over such offences as were not felonies, and offenders were punishable by amerciaments, or by the pillory, stocks, cucking-stool, or tumbrell.

It is expressly enacted by statute that courts leet, courts baron, law days, views of frankpledge, or other like courts held on the 16th September, 1887, shall continue to be held on the days and in the places heretofore accustomed (*s*).

The jurisdiction has, however, fallen into complete disuse, having been superseded by the summary jurisdiction exercised by the justices of the peace (*t*).

View of frankpledge.

484. The franchise of view of frankpledge was liable to be lost by non-user, or in consequence of the lord not having proper officers, or not possessing *judicalia*, such as the pillory, stocks etc. (*u*).

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ante), which was abolished in 1887 (Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 18 (4)).

The civil jurisdiction of the hundred court was practically abolished in 1867 by the County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 28, which provided that no action which could be brought in a county court should thenceforth be commenced in a hundred court not being a court of record (as in the case of the Salford Hundred Court; see p. 197, *ante*).

(*n*) See p. 216, *post*. As to courts baron, see Vinogradoff, The Growth of the Manor, pp. 362 *et seq.*

(*o*) Visum de Frankpledge.

(*p*) The title of the court is "Manor of , Court of Frankpledge of A. B., Lord of the Manor aforesaid holden before ."

(*q*) That is, the essoign pence, fines, and amerciaments (Ritson, Court Leet, p. 5).

(*r*) It is said that in ancient times it was held before the bailiff of the lord (Ritson, Court Leet, p. 6). As to place, see *R.* v. *Ilchester* (*Bailiff*) (1824), 2 B. & C. 764.

(*s*) Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 40: "The courts leet etc. shall not have any larger powers, nor shall any larger fees be taken thereat, than previously, and indictments and presentments shall be dealt with as previously."

(*t*) See title MAGISTRATES.

(*u*) *Tottersall's Case* (1632), W. Jo. 283.

SECT. 2. Manorial Courts.

Borough courts leet.

485. In many cases manorial rights were vested in a borough, and thus, or by a separate royal grant, the corporation had the right to hold a court leet (*a*), which then became the appropriate court in which the mayor or portreeve and other officers were appointed (*b*).

SUB-SECT. 3.—*The Court Baron.*

Court baron.

486. The civil jurisdiction of the halimote was exercised by the court baron (*c*), which, like the court leet, was a franchise incident to a manor (*d*) either by prescription or grant by letters patent. The abolition of real actions in 1833 (*e*) destroyed the obsolete jurisdiction of these courts under the original writs directed to them (*f*). In 1867 their jurisdiction was abolished in all actions maintainable in a county court, except where they were courts of record (*g*). The effect of this legislation is to restrict their jurisdiction as courts for the trial of actions to such cases as are not within the jurisdiction of the county court, and in which under 40*s*. is claimed as debt or damages (*h*).

SUB-SECT. 4.—*The Customary Court.*

Customary court.

487. The origin of this court is obscure. It apparently arose out of the absolute jurisdiction of the lord over his villeins. The customary court had for its suitors the copyholders and customary tenants of the manor (*i*). In case a reputed manor had not the two freeholders as tenants necessary to constitute the court baron, the right to hold a court for the copyholders and customary tenants still subsists (*k*).

There may also be a customary manor held of another manor by copy of court roll, with copyholders and a customary court for them (*l*). A court may be held for purely ministerial purposes, although no copyholders or customary tenants are present (*m*).

(*a*) See under the separate boroughs in Part XVII., sect. 5, of this title, *ante*, for grants of courts leet.

(*b*) The Municipal Corporations Act, 1883 (46 & 47 Vict. c. 18), abolished a large number of unreformed corporations and the civil and criminal courts which they held by charter or prescription, but the Act expressly saved the courts leet of Over and Altrincham for the purpose of electing titular mayors. The court leet of the Precinct of the Savoy is still held, and exercises the jurisdiction over nuisances etc. See Carter, History of English Legal Institutions, p. 291.

(*c*) See the Court Baron, Selden Society Publications, Vol. IV.

(*d*) A court baron is incident to a manor, and a manor cannot be without a court baron and suitors or freeholders, two at the least (Scroggs, Courts Leet and Courts Baron, 4th ed., p. 79).

(*e*) Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27).

(*f*) See title ACTION, Vol. I., p. 45.

(*g*) See note (*m*) on p. 214, *ante*.

(*h*) These courts baron were ordained—(1) to adjust differences between lord and lord adjoining; (2) to keep rest and quietness between lord and tenant, that the lord should permit the tenant to enjoy, paying his rent and performing his services, and that the tenant should not wrong the lord by withdrawing his rent, custom, or services (*ibid.*, p. 83). As to the court baron, see title COPYHOLDS, Vol. VIII., p. 10.

(*i*) See title COPYHOLDS, Vol. VIII., p. 11.

(*k*) Scroggs, Courts Leet and Courts Baron, 4th ed., pp. 80, 81.

(*l*) *Ibid.*

(*m*) Copyhold Act, 1894 (57 & 58 Vict. c. 46), ss. 82, 83. See, further, title COPYHOLDS, Vol. VIII., p. 11.

SUB-SECT. 5.—*Courts of Ancient Demesne.*

SECT. 2. Manorial Courts.

Courts of ancient demesne.

488. Those manors which were in the hands of Edward the Confessor or William the Conqueror, and are so expressed in Domesday Book, are called the ancient demesne of the Crown. All those who hold in socage of these manors are tenants in ancient demesne. The courts of these manors are called courts of ancient demesne. These courts are similar to courts baron, and, like them, they are not courts of record, and the suitors are the judges, and two suitors are necessary to the existence of the court (*n*).

Part XIX.—Judicial Commissioners.

SECT. 1.—*The Railway and Canal Commission.*

SUB-SECT. 1.—*Constitution and Judges.*

Constitution of the Railway and Canal Commission.

489. The Railway and Canal Commission was constituted in its present form in 1888 (*o*). It consists of two commissioners appointed by His Majesty on the recommendation of the President of the Board of Trade, one of whom is to be of experience in railway business (*p*), and three *ex-officio* commissioners, one each for England, Scotland, and Ireland respectively, being such judge of a superior court as shall be nominated, in the case of England, by the Lord Chancellor, of Scotland by the Lord President of the Court of Session, and of Ireland by the Lord Chancellor of Ireland. The *ex-officio* commissioners are not required to attend sittings of the Commission outside of that part of the United Kingdom for which they are nominated (*q*).

The appointed commissioners are paid such salary not exceeding £3000 a year as the President of the Board of Trade may, with the concurrence of the Treasury, appoint (*r*)

The presence of three commissioners is required for the hearing of any case. The *ex-officio* commissioner presides, whose opinion prevails on all points of law. If the *ex-officio* commissioner is unable to attend another judge may be nominated to sit for him, and similarly, if an appointed commissioner cannot attend, the President of the Board of Trade may nominate a temporary commissioner to hear any particular case (*s*). On an address from both Houses of Parliament an additional judge of the High Court

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(*n*) 4 Co. Inst. 269.

(*o*) Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 2. This Act repealed s. 4 of the Railway and Canal Traffic Act, 1873 (36 & 37 Vict. c. 43), which provided for the appointment of three commissioners, one of whom was to be of experience in the law and one of experience in railway business, and of not more than two assistant commissioners. As to procedure before the commissioners, see title RAILWAYS AND CANALS.

(*p*) *Ibid.*, s. 3.

(*q*) *Ibid.*, s. 4.

(*r*) *Ibid.*, s. 3 (4).

(*s*) *Ibid.*, s. 5 (6), (7).

SECT. 1. The Railway and Canal Commission.

may be appointed, if the amount of business before the Commission renders it advisable (*t*).

SUB-SECT. 2.—*Jurisdiction.*

Jurisdiction.

490. The jurisdiction of the Commission over railway and canal companies is to hear and determine complaints in respect of—(1) undue preference or traffic facilities (including through rates (*a*) and junctions with private sidings (*b*)), arising either under s. 2 of the Railway and Canal Traffic Act, 1854 (*c*), or under the special Act of the company (*d*); (2) accommodation works or obligations in favour of the public or individuals enacted in the special Act (*e*); (3) disputes as to the legality of tolls and rates (*f*); (4) the publication of rates by a station rate book (*g*); (5) terminal charges (*h*); (6) increase of rates and charges since 31st December, 1894 (*i*); (7) allowances in respect of terminals to owners of sidings (*k*); (8) the approval of working agreements between companies (*l*); (9) differences with the Postmaster-General as to the conveyance of mails (*m*); (10) differences between railway companies (in lieu of arbitration) (*n*); (11) under the Cheap Trains Act, 1883 (*o*); (12) agreements whereby a railway company obtains control over a canal (*p*); (13) as to hours of railway servants (*q*); (14) as to the working of traffic by way of steamboats (*r*); (15) as to complaints as to water supply in the area of the Metropolitan Water Board (*s*); (16) to hear appeals from stipendiary magistrates or county court judges determining differences as to the placing of telegraphs upon public roads (*t*); (17) to hold local inquiries and make provisional orders for the construction of telegraph works on private land (*a*).

The Board of Trade has also power to appoint the Railway Commissioners arbitrators in cases where matters are directed to be referred to the arbitration of the Board of Trade or of arbitrators appointed by them (*b*).

The commissioners have also power to report to Parliament in

(*t*) Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), s. 6. This power has not been exercised.
(*a*) *Ibid.*
(*b*) Railways (Private Sidings) Act, 1904 (4 Edw. 7, c. 19).
(*c*) 17 & 18 Vict. c. 31.
(*d*) Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), ss. 8, 9, 11.
(*e*) *Ibid.*, s. 9.
(*f*) *Ibid.*, s. 10.
(*g*) Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), s. 14.
(*h*) *Ibid.*, s. 15.
(*i*) Railway and Canal Traffic Act, 1894 (57 & 58 Vict. c. 54), s. 1.
(*k*) *Ibid.*, s. 4.
(*l*) See also Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), s. 25.
(*m*) Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), s. 19; Conveyance of Mails Act, 1893 (56 & 57 Vict. c. 38), ss. 1, 4 (by the appointed commissioners).
(*n*) Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), s. 8.
(*o*) 46 & 47 Vict. c. 34.
(*p*) Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), s. 16.
(*q*) Railway Regulation Act, 1893 (56 & 57 Vict. c. 29), s. 1.
(*r*) Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 16.
(*s*) Metropolis Water Act, 1897 (60 & 61 Vict. c. 56).
(*t*) Telegraph Act, 1878 (41 & 42 Vict. c. 76), s. 4.
(*a*) Telegraph Act, 1892 (55 & 56 Vict. c. 59), s. 2.
(*b*) Board of Trade Arbitrations etc. Act, 1874 (37 & 38 Vict. c. 40), s. 6.

case they are of opinion that the interests of the public are injuriously affected by the exercise of any railway companies' powers as to steam vessels (*c*).

SECT. 2.—*Land Tax Commission.*

Land Tax Commission.

491. The Land Tax Commission consists of commissioners appointed by name by statutes passed from time to time in that behalf (*d*), with the addition of justices of the peace within their respective counties, ridings, divisions, districts (*e*), and boroughs (*f*). In the case of cities, boroughs, Cinque Ports, and towns corporate a commissioner must be qualified by being an inhabitant (*g*).

These commissioners, two of whom are a quorum (*h*), have power to hear and finally determine without appeal all questions and differences respecting the assessment and collection of land tax, on complaint of any person aggrieved (*i*).

If any commissioner is interested in any question brought before the commissioners he is disqualified and must retire till the remainder of the commissioners have given their decision (*k*). If he refuses to withdraw, the other commissioners have power to inflict upon him a fine not exceeding £20 (*l*), or a suit in the name of the Attorney-General may be brought in the High Court against him for a penalty of £50 (*m*).

SECT. 3.—*Income Tax Commissioners.*

Income Tax Commissioners.

492. There are two classes of Income Tax Commissioners, namely, the Commissioners for the General Purposes of the Income Tax Acts and the Commissioners for the Special Purposes of those Acts. The first of these, called "the general commissioners" (*n*), are appointed by the Land Tax Commissioners from their own number (*o*) to act for the county or other district over which they have jurisdiction. The second, called the "special commissioners" (*p*), consist of the Inland Revenue Commissioners and such persons as are appointed by the Treasury (*q*).

These two bodies have jurisdiction to hear appeals from persons

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(*c*) Railways Clauses Act, 1863 (26 & 27 Vict. c. 92), s. 35; Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), s. 10. See also, generally, title RAILWAYS AND CANALS.

(*d*) The latest statute is the Land Tax Commissioners Act, 1906 (6 Edw. 7, c. 52). The land tax was imposed in 1689 (1 Will. & Mar. c. 3), and was at first annual, but was made perpetual by the Land Tax Act, 1798 (38 Geo. 3, c. 5). The Act of 1689 named the first commissioners.

(*e*) Land Tax Commissioners Act, 1827 (7 & 8 Geo. 4, c. 75), s. 1.

(*f*) Land Tax Commissioners Act, 1906 (6 Edw. 7, c. 52), s. 3.

(*g*) Land Tax Commissioners Act, 1798 (38 Geo. 3, c. 48), s. 1.

(*h*) Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 5.

(*i*) Land Tax Act, 1797 (38 Geo. 3, c. 5), s. 23.

(*k*) *Ibid.*

(*l*) *Ibid.*

(*m*) Taxes Management Act, 1880 (43 & 44 Vict. c. 19), ss. 21, 35. See also, generally, title LAND TAX.

(*n*) *Ibid.*, s. 5.

(*o*) Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 4.

(*p*) Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 5.

(*q*) Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 23.

SECT. 3. Income Tax Commissioners.

aggrieved by assessments or surcharges for income tax and objections to such assessments by the inspector or surveyor of taxes.

The general commissioners have also jurisdiction to hear appeals from persons aggrieved by assessments for inhabited house duty (*r*).

A person aggrieved by an assessment under Schedule D of the Income Tax Acts may appeal either to the general commissioners or to the special commissioners, except in the case of exemption or relief on account of his income being less than £700 a year, in which case the appeal lies to the general commissioners only (*s*).

Claims for allowances in respect of the duties in Schedule A by colleges, public schools, hospitals, almshouses, literary institutions, and charities are to be made to the special commissioners (*t*), as also are claims for exemption from the duties in Schedule C (*a*).

The decisions both of the general (*b*) and special commissioners (*c*) are final, except when the appellant or the surveyor at once expresses his dissatisfaction with the decision as being erroneous in point of law, and within twenty-one days requires a case to be stated for the opinion of the High Court of Justice (*d*).

An appeal lies from the decision of the High Court to the Court of Appeal, and thence to the House of Lords (*e*).

SECT. 4.—*Commissioners of Sewers.*

SUB-SECT. 1.—*Constitution.*

Commissioners of sewers.

493. Commissions of sewers are issued by way of Letters Patent under the Great Seal, from time to time as need requires, to such substantial and indifferent persons as are named by the Lord Chancellor, the Lord Treasurer, and the Lord Chief Justice (*f*). Commissions of sewers can also issue on recommendation of the Inclosure Commissioners to be obtained on petition of the proprietors after investigation by an inspector (*g*).

The Commissioners of Sewers are required to be sworn in the prescribed form (*h*), and are to forfeit £40 for every time they shall attempt to act if unsworn (*i*).

Commissions of sewers stand and continue in force for ten years, unless they are determined by the issue of a new commission or by a writ of *supersedeas* discharging such commission or commissions (*k*).

(*r*) Taxes Management Act, 1880 (43 & 44 Vict. c. 19), ss. 27 (1), 57 (2).
(*s*) Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 118, 130; Finance Act, 1898 (61 & 62 Vict. c. 10), s. 8.
(*t*) Income Tax Act, 1842 (5 & 6 Vict c. 35), s. 62.
(*a*) *Ibid.*, s. 98. See also, generally, title INCOME TAX.
(*b*) Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 57 (10).
(*c*) Income Tax Act, 1842 (5 & 6 Vict. c. 35), s. 130.
(*d*) Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 59.
(*e*) *Ibid.*, s. 59 (3). See *R.* v. *General Commissioners for Taxes for Clerkenwell*, [1901] 2 K. B. 879, 894, C. A.
(*f*) General Act concerning Commissions of Sewers to be directed to all parts within this realm, 1531 (23 Hen. 8, c. 5), s. 1.
(*g*) Land Drainage Act, 1861 (24 & 25 Vict. c. 133), ss. 4, 5.
(*h*) 23 Hen. 8, c. 5, s. 2.
(*i*) *Ibid.*, s. 7.
(*k*) Sewers Act, 1833 (3 & 4 Will. 4, c. 22), s. 6.

Commissioners of Sewers have full power and authority to make, constitute, and ordain laws, ordinances, and decrees, and to amend and repeal such laws, and to make new laws as the cases necessary require in that behalf (*l*).

The court of the commissioners.

494. The Commissioners of Sewers have a court, although the statutes do not in express terms grant a court. They are, however, said to be the King's justices (*m*), and the Court of King's Bench has held that they have a court of record (*n*). They may command the sheriffs by their mandatory writs to summon a jury of twelve men for the purpose of an inquiry (*o*).

SUB-SECT. 2.—*Jurisdiction.*

Jurisdiction.

495. The Commissioners of Sewers have jurisdiction to survey the walls, ditches, banks, gutters, sewers, goots, calces, bridges, streams, and other defences by the coasts of the sea, and marsh ground, and mills, milldams, floodgates, ponds, locks, hebbing weares, and other impediments, lets, and annoyances, and to cause the same to be corrected, repaired, amended, put down, or reformed as the case shall require after their wisdom and discretion (*p*). All walls, banks, culverts, and other defences whatever, whether natural or artificial, situate by the coasts of the sea, and all rivers, streams, sewers, and watercourses which are navigable or where the tide ebbs and flows, and all walls, banks, culverts, bridges, dams, floodgates, and other works erected in, upon, over, or adjoining such rivers etc., are within the jurisdiction of the commissioners, except ornamental works erected before 1833 and watercourses near or contiguous to houses or buildings, or in gardens, parks, avenues etc., in which cases the consent of the owner in writing is necessary to authorise the commissioners to exercise jurisdiction (*q*). They may also decree and ordain new works or alterations in old works, and may abandon old works and decree and ordain new works in lieu thereof (*r*); but no new works are to be made without the consent of the owners and occupiers of three fourth parts in value of the lands to be charged (*s*).

The Commissioners of Sewers by themselves without a jury may survey the defences and ascertain the defects and what is necessary for repairing them and the cost thereof (*t*).

(*l*) General Act concerning Commissions of Sewers, 1531 (23 Hen. 8, c. 5), s. 4.

(*m*) *Ibid.* "We therefore . . . have assigned you . . . to be our justices," form of commission contained in s. 1.

(*n*) *Newcastle* (*Duke*) v. *Clark* (1818), 8 Taunt. 602, 625, 627, 631. "An Act of Parliament was made in the year 1531, previously to which the commissioners of sewers had a regular jurisdiction of oyer and terminer, which they had been accustomed to have at all times" (*ibid.*, *per* BURROUGH, J., at p. 631).

(*o*) 23 Hen. 8, c. 5, s. 1; *Newcastle* (*Duke*) v. *Clark*, *supra*, at p. 627, *per* PARK, J.; Sewers Act, 1833 (3 & 4 Will. 4, c. 22), s. 11.

(*p*) General Act concerning Commissions of Sewers, 1531 (23 Hen. 8, c. 5), s. 1.

(*q*) Sewers Act, 1833 (3 & 4 Will. 4, c. 22), s. 10.

(*r*) *Ibid.*, s. 19.

(*s*) *Ibid.*, s. 21.

(*t*) Callis on Sewers, 107. See, as to sewers generally, title SEWERS AND DRAINS.

SECT. 4. Commissioners of Sewers.

Presentments by jury.

496. A jury may present (1) the erection of impediments, as floodgates, mills etc.; (2) by whose default defects in the defences have arisen; (3) what persons are bound by custom, prescription, tenure, covenant, or otherwise to repair defects; (4) what grounds lie within the hurt or danger of waters, either within the surrounder by the sea or the inundation of the fresh waters, and to whom they belong; (5) what persons hold lands which are chargeable to new works, and the quantity of their lands; (6) amerciaments (*a*). The presentments of the jury must be made on evidence on oath before the commissioners in court and not upon information collected *in pais* without oath (*b*).

Appeals.

497. All orders and rates made by the Commissioners of Sewers without the presentment of a jury can be appealed against to quarter sessions, when the matter may be decided by the justices or by arbitration (*c*).

SECT. 5.—*Board of Agriculture and Fisheries.*

Tithe commutation.

498. The jurisdiction under the Tithe Commutation Acts is exercised by the Board of Agriculture and Fisheries (*d*), and appears now to be restricted to altering the apportionment of tithe rentcharge in certain cases: (1) between different lands of the same person at his desire and at his expense (*e*); (2) where lands charged with one rentcharge have become vested in several owners (*f*); (3) where divisions of lands have been altered under Inclosure Acts (*g*); (4) where the boundaries of parishes have been changed (*h*); (5) where lands have been included in an apportionment by mistake (*i*); (6) where rentcharge has been made payable to the wrong person or in the wrong interest (*k*); (7) where the Board, with the consent of the owners, think it desirable (*l*); (8) where alterations have made the collection of the rentcharge unreasonably difficult or inconvenient (*m*); and (9) where through the removal of fences difficulties have arisen as to what land is liable to rentcharge etc. (*n*).

(*a*) Callis on Sewers, 108—110; Sewers Act, 1833 (3 & 4 Will. 4, c. 22), s. 10.
(*b*) *R.* v. *Somerset Commissioners of Sewers* (1805), 7 East, 71.
(*c*) Sewers Act, 1833 (3 & 4 Will. 4, c. 22), ss. 47—50.
(*d*) The Tithe Commissioners were constituted by the Tithe Act, 1836 (6 & 7 Will. 4, c. 71), s. 1. These Tithe Commissioners were united in 1882 with the Copyhold Commissioners and the Inclosure Commissioners, and the three sets of commissioners were constituted the Land Commissioners (Settled Land Act, 1882 (45 & 46 Vict. c. 38), s. 48). In 1889 the powers and duties of the Land Commissioners were transferred to the Board of Agriculture (now the Board of Agriculture and Fisheries) (Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 2, Sched. I., Pt. II.). As to the Board of Agriculture and Fisheries, see title AGRICULTURE, Vol. I., p. 297.
(*e*) Tithe Act, 1842 (5 & 6 Vict. c. 54), s. 14
(*f*) *Ibid.*, s. 14.
(*g*) Tithe Act, 1846 (9 & 10 Vict. c. 73), s. 13.
(*h*) Tithe Act, 1860 (23 & 24 Vict. c. 93), s. 16.
(*i*) Tithe Act, 1847 (10 & 11 Vict. c. 104), s. 3.
(*k*) Tithe Act, 1846 (9 & 10 Vict. c. 73), s. 15.
(*l*) Tithe Act, 1860 (23 & 24 Vict. c. 93), s. 11.
(*m*) *Ibid.*, s. 15.
(*n*) *Ibid.*, s. 12.

SECT. 5. Board of Agriculture and Fisheries.

The Board of Agriculture and Fisheries have power to summon witnesses, administer oaths and examine witnesses on oath, and cause to be produced before them, on oath, all necessary books, terriers, maps, plans etc. (*o*). Witnesses refusing to answer or to produce documents etc. are to be deemed guilty of a misdemeanour (*p*).

(*o*) Tithe Act, 1836 (6 & 7 Will. 4, c. 71), s. 10.
(*p*) *Ibid.*, s. 93. As to tithe, see title ECCLESIASTICAL LAW.

COURTS-MARTIAL.

See COURTS; ROYAL FORCES.

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NOTE.—For Crimes and Offences not included in the above tables see the appropriate titles—*e.g.*, Cruelty to Animals will be found under title ANIMALS; Corrupt Practices under title ELECTIONS; and so on.

Part I.—Principles of Criminal Liability.

SECT. 1.—*The Nature of Crime in General.*

SUB-SECT. 1.—*Definitions.*

Definition of crime.

499. Criminal law and procedure deal with the nature, prosecution, and punishment of crime.

A crime is an unlawful act or default which is an offence against the public, and renders the person guilty of the act or default liable to legal punishment (*a*). While a crime is often also an injury to a private person, who has a remedy in a civil action, it is as an act or default contrary to the order, peace, and well-being of society that a crime is punishable by the State (*b*). A civil proceeding has for its object the recovery of money or other property, or the

Distinction between criminal and civil proceedings.

(*a*) 4 Bl. Com. 5; Stephen, History of the Criminal Law, Vol. I., 1; *Mann* v. *Owen* (1829), 9 B. & C. 595, at p. 599. "An illegal act which is a wrong against the public welfare, seems to have the necessary elements of a crime" (*Mogul Steamship Co.* v. *McGregor, Gow & Co.* (1889), 23 Q. B. D. 598, C. A., at p. 606, *per* Lord ESHER, M.R.).

(*b*) This is expressed by the common forms at the end of indictments "against the peace of our Lord the King," or "against the form of the statute in such case made and provided." And see *Parker* v. *Green* (1862), 2 B. & S. 299; *Mellor* v. *Denham* (1880), 5 Q. B. D. 467; *R.* v. *Sullivan* (1874), 8 I. R. C. L. 404.

enforcement of a right for the advantage of the person suing, while a criminal proceeding has for its object the punishment of a public offence (*c*).

Punishment.

500. Legal punishment is punishment awarded in a process which is instituted at the suit of the Crown "standing forward as prosecutor on behalf of the subject on public grounds" (*d*); such process when instituted can only be stayed at the instance of the Attorney-General acting on behalf of the Crown, and such punishment when awarded can only be remitted by the Crown or Parliament.

Legal punishment is of various kinds, and includes death, imprisonment, detention, flogging, fine and confiscation of property; it is sometimes attended with disqualification, loss of civil status and political rights (*e*).

SUB-SECT. 2.—*Criminal Intention.*

Elements of crime. Overt act and *mens rea*.

501. A person cannot be guilty of a crime unless he has committed an overt act, *i.e.*, an act capable of being observed by someone else, or has made default in doing some such act (*f*), and unless a wrongful intention or some other blameworthy condition of the

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(*c*) *A.-G.* v. *Radloff* (1854), 10 Exch. 84, *per* PLATT, B., at p. 101. See also *Re Douglas* (1842), 3 Q. B. 825. If a statute prohibits or commands an act of commission or omission of public importance, disobedience to the statute is criminal and punishable by indictment, unless such proceeding manifestly appears to be excluded by the statute (2 Hawk. P. C., c. 25, s. 4; [As regards the references to Hawkins's Pleas of the Crown, it may be noted that the editions chiefly used are those by Leach (1795), and Curwood (1824). There is some difference of opinion as to the merits of these editions, but after consideration the editors have given the preference to the latter, which is the edition used in many of the courts and in most of the principal law libraries. In some cases reference has been made to the first (1716) folio edition]; *R.* v. *Hall*, [1891] 1 Q. B. 747). An act or default may be forbidden by statute in such a way that the person guilty may be liable to a pecuniary penalty, which is recoverable as a debt by civil process by a private person, or in some cases only by an officer of the Crown; such an act or default is an offence against the statute, but is not a crime (see *Atcheson* v. *Everitt* (1776), 1 Cowp. 382; *Ex parte Beeching* (1825), 4 B. & C. 136; *A.-G.* v. *Siddon* (1830), 1 Cr. & J. 220; *A.-G.* v. *Radloff* (1854), 10 Exch. 84; *Parker* v. *Green* (1862), 2 B. & S. 299; *R.* v. *Hawkhurst* (*Parish*) (1862), 26 J. P. 772; *A.-G.* v. *Bradlaugh* (1885), 14 Q. B. D. 667, C. A.; *R.* v. *Tyler*, [1891] 2 Q. B. 588, C. A., *per* BOWEN, L.J., at p. 594). The words "penalty" and "offence" are sometimes used of a criminal act (see *R.* v. *Paget* (1881), 8 Q. B. D. 151), sometimes of an act which is not criminal (*A.-G.* v. *Radloff*, *supra*). The same act or default may give rise to a civil and to a criminal proceeding, *e.g.*, assault and battery, wounding, larceny, libel. See title ACTION, Vol. I., pp. 27—29, as to civil actions in respect of felonious torts.

(*d*) *Burdett* v. *Abbot* (1811), 14 East, 154, at p. 162, *per* BAYLEY, J. Any private person, in the absence of statutory provision to the contrary, can commence a criminal prosecution, but the prosecution is always at the suit of the Crown. Hence it is that criminal proceedings were called pleas of the Crown.

(*e*) See p. 409, *post*.

(*f*) In some kinds of treason (*e.g.*, compassing the death of the Sovereign) the intention constitutes the crime, but the law requires that the intention should be manifested by some overt act (*R.* v. *Thistlewood* (1820), 33 State Tr. 682; see p. 451, *post*). In conspiracy, the agreement of two or more persons to do an unlawful act is criminal, as the agreement can only be arrived at by consultation, which is an overt act; if two or more persons so agree, the very plot is an

SECT. 1. The Nature of Crime in General.

mind (*mens rea*) can be imputed to him in respect of such act or default (*g*).

A blameworthy condition of the mind will not be imputed to a person who does an overt act, unless the act is voluntary; in many cases the act will not be criminal unless it is also deliberately intended (*h*).

Mens rea, or a blameworthy condition of the mind, may consist of a traitorous or malicious or fraudulent intent or of guilty knowledge or negligence (*i*); or, if an act is morally wrong and is also forbidden by law (*j*), *mens rea* may consist of the mere intent to do the act. But *mens rea* may also consist simply of an intent to do an act which is forbidden by law, or to omit to do an act when the omission is an offence (*k*).

Responsibility of master for acts of servants.

502. Where a particular intent or state of mind is of the essence of an offence, the person committing the act is not criminally responsible, if he had no *mens rea* and the act was ordered or procured by another person; but the person who ordered or procured the act is criminally responsible (*l*).

In general a person is not criminally liable for an act or omission unless he has himself committed or omitted the act or authorised or known of or shut his eyes to the commission or omission (*m*).

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act of itself and is criminal (*Mulcahy* v. *R.* (1868), L. R. 3 H. L. 306; *R.* v. *Aspinall* (1876), 2 Q. B. D. 48, C. A., *per* BRETT, J., at p. 58).

(*g*) *Actus non facit reum, nisi mens sit rea*; see Stephen, History of the Criminal Law, Vol. II., 94. As to cases where *mens rea* need not be proved, see *infra*.

(*h*) 4 Bl. Com. 20. A voluntary act or omission is one which is willed. An involuntary act or omission is one which is not willed, *e.g.*, an act done by a person in a state of unconsciousness, as in sleep, or by a person of such tender years or in such a state of idiocy or insanity that he has, or is deemed to have, no mind and therefore no will (see p. 241, *post*), or by a person who is constrained by overwhelming force to act in a particular way (see p. 243, *post*). For the purposes of criminal law, an act or omission is voluntary if it might have been avoided by the exercise of reasonable care; thus a negligent act or omission is willed, because the person responsible does not will to prevent the commission or omission. An accidental act or omission is involuntary, and therefore not criminal, if it could not have been avoided by the exercise of reasonable care (see p. 238, *post*). An act is intended when it is willed and when the ordinary consequences of the act are contemplated and desired (see Austin's Jurisprudence, Vol. I., p. 441; Stephen, History of the Criminal Law, Vol. I., 99). As to the effect of drink on the will, see p. 242, *post*.

(*i*) *Chisholm* v. *Doulton* (1889), 22 Q. B. D. 736.

(*j*) *R.* v. *Prince* (1875), L. R. 2 C. C. R. 154; *R.* v. *Tolson* (1889), 23 Q. B. D. 168, C. A. If the act is morally wrong, it is no defence in such a case that the accused did not know that the act was forbidden by law (*R.* v. *Prince*, *supra*).

(*k*) See *R.* v. *Bishop* (1880), 5 Q. B. D. 259, C. C. R.; *Bank of New South Wales* v. *Piper*, [1897] A. C. 383, P. C., at p. 389. In such case an intent to break the law is imputed, as a person cannot set up ignorance of law as an excuse (see p. 236, *post*).

(*l*) *R.* v. *Giles* (1827), 1 Mood. C. C. 166; *R.* v. *Michael* (1840), 9 C. & P. 356; *R.* v. *Williams* (1842), Car. & M. 259; *R.* v. *Manley* (1844), 1 Cox, C. C. 104; *R.* v. *Bull* (1845), 1 Cox, C. C. 281; *R.* v. *Clifford* (1845), 2 Car. & Kir. 202; *R.* v. *Bleasdale* (1848), 2 Car. & Kir. 765, *per* ERLE, J., at p. 768; *R.* v. *Butcher* (1858), Bell, C. C. 6; see Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 19 (3).

(*m*) See *R.* v. *Pearson* (No. 2) (1908), 72 J. P. 451; *R.* v. *Key* (1909), 52 Sol. Jo. 784.

The condition of mind of a servant or agent is not imputed to the master or principal so as to make him criminally liable (*a*). A master is not criminally liable merely because his servant or agent commits a negligent (*b*) or malicious (*c*) or fraudulent act. But in cases where a particular intent or state of mind is not of the essence of the offence, the acts or defaults of a servant or agent in the ordinary course of his employment may make the master or principal criminally liable, although he was not aware of such acts or defaults, and even where they were against his orders (*d*).

Corporations.

503. A corporation aggregate can only act through its servants or agents, and it is only through the acts and defaults of such persons that it can be made criminally liable. A corporation aggregate may be made liable in its corporate capacity for a crime for the punishment of which a fine may be awarded, if the corporation fails to perform a duty imposed by common law, charter, or

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(*a*) *R.* v. *Holbrook* (1877), 3 Q. B. D. 60, at p. 63; (1878) 4 Q. B. D. 42, at p. 47; see *Newman* v. *Jones* (1886), 17 Q. B. D. 132.

(*b*) *R.* v. *Allen* (1835), 7 C. & P. 153; *R* v. *Bennett* (1858), Bell, C. C. 1; *Dickenson* v. *Fletcher* (1873), L. R. 9 C. P. 1; *Chisholm* v. *Doulton* (1889), 22 Q. B. D. 736.

(*c*) *R.* v. *Huggins* (1730), 2 Ld. Raym. 1574. A master is not responsible criminally for his servant's libel, if he can prove that the publication was without his authority and did not proceed from want of due care or caution on his part (Libel Act, 1843 (6 & 7 Vict. c. 96), s. 7, and see *R.* v. *Holbrook* (1877), 3 Q. B. D. 60; (1878) 4 Q. B. D. 42.

(*d*) *R.* v. *Stephens* (1866), L. R. 1 Q. B. 702; see *A.-G.* v. *Siddon* (1830), 1 Cr. & J. 220; *R.* v. *Medley* (1834), 6 C. & P. 292; *Barnes* v. *Akroyd* (1872), L. R. 7 Q. B. 474; but see *Chisholm* v. *Doulton*, *supra*. Under the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), the acts of the servant unknown to the master may make the master criminally liable (see *Farley* v. *Higginbotham* (1898), 42 Sol. Jo. 309 (refusal to sell to a police officer); *Morris* v. *Corbett* (1892), 56 J. P. 649; *Brown* v. *Foot* (1892), 61 L. J. (M. C.) 110 (sale of milk from which cream had been extracted); but see *Kearley* v. *Tonge* (1891), 60 L. J. (M. C.) 159, which, however, is probably not law. See title FOOD AND DRUGS. For other instances of a master or principal being criminally liable for the acts of his servant or agent, see *Davies* v. *Harvey* (1874), L. R. 9 Q. B. 433 (supply of goods to be used for parochial relief); *Mullins* v. *Collins* (1874), L. R. 9 Q. B. 292 (supplying liquor to constable on duty); *Redgate* v. *Haynes* (1876), 1 Q. B. D. 89; *Bond* v. *Evans* (1888), 21 Q. B. D. 249 (suffering gaming), but see *Somerset* v. *Hart* (1884), 12 Q. B. D. 360; *Roberts* v. *Woodward* (1890), 25 Q. B. D. 412 (weights and measures); *Collman* v. *Mills*, [1897] 1 Q. B. 396 (bye-law); *Bosley* v. *Davies* (1875), 1 Q. B. D. 84 (suffering gaming); *Commissioners of Police* v. *Cartman*, [1896] 1 Q. B. 655 (sale of intoxicating liquor to drunken person). See also title MASTER AND SERVANT. In a prosecution under the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2 (2), for selling goods to which a false trade description is applied, the master is criminally liable for the acts of his servant acting within the general scope of his employment, but contrary to his orders, unless he can show that he has acted in good faith and has done all that it was reasonably possible to do to prevent the commission of the offence by his servants (*Coppen* v. *Moore* (No. 2), [1898] 2 Q. B. 306); the onus of proof is on the master, and, if he can show that he has acted innocently, he is not criminally liable (*Christie, Manson and Woods* v. *Cooper*, [1900] 2 Q. B. 522). A licensed person cannot be convicted under the Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. 7, c. 27), s. 2, of "knowingly allowing a person to sell" intoxicating liquor to a child under fourteen in a vessel not properly corked or sealed, if the liquor is sold by a servant without the knowledge of the master and against his express orders and the master was himself in charge of the premises at the time (*Emary* v. *Nolloth*, [1903] 2 K. B. 264); see also title INTOXICATING LIQUORS.

SECT. 1. The Nature of Crime in General.

statute or commits by its servants or agents, acting in the course of their employment, an offence which does not involve criminal intent (*e*).

Proof of *mens rea*.

504. In all the graver class of crimes a particular intent or state of mind is a necessary ingredient of the offence, and must be averred in the indictment and proved by the prosecution (*f*).

When an act which is of itself indifferent becomes criminal if done with a particular intent, the intent must be proved (*g*). But when the act is unequivocal, the proof that it was done may of itself be evidence of the intention which the nature of the act conveys (*h*). In such case there is a presumption of law that the person accused intended the probable consequences of his act (*i*).

Disproof of *mens rea*.

505. When the existence of a particular intent or state of mind is a necessary ingredient of the offence, and *primâ facie* proof of the existence of such intent or state of mind has been given by the prosecution, the defendant may excuse himself by disproving the existence in him of any guilty intent or state of mind, *e.g.*, by showing that he was justified in doing the act with which he is charged (*k*), or that he did it accidentally, or in ignorance (*a*), or that he had an honest and reasonable belief in the existence of facts which, if they had really existed, would have made the act both legally and morally innocent (*b*).

(*e*) See title CORPORATIONS, Vol. VIII., p. 390. There is a special proceeding against corporations which was originally criminal, namely, an information by *quo warranto* against a corporation for negligence or abuse of its franchises; but this has now for long been regarded as a civil proceeding (see 1 Bl. Com. 473, 3 *ibid.* 263, 4 *ibid.* 307; Judicature Act, 1884 (47 & 48 Vict. c. 61), s. 15); and see *A.-G.* v. *London Corporation* (1683), 8 State Tr. 1039, and title CROWN PRACTICE.

(*f*) See p. 341, *post*. Sometimes a statute which constitutes an offence, while not expressly making a particular intent or state of mind a necessary ingredient of the offence, does so by implication (*R.* v. *Cohen* (1858), 8 Cox, C. C. 41; *Hearne* v. *Garton* (1859), 28 L. J. (M. C.) 216; *R.* v. *Sleep* (1861), 8 Cox, C. C. 472; *Core* v. *James* (1871), L. R. 7 Q. B. 135; in such a case the intent or state of mind must be affirmatively proved by the prosecution (*Nichols* v. *Hall* (1873), L. R. 8 C. P. 322; *Small* v. *Warr* (1882), 47 J. P. 20; *Sherras* v. *De Rutzen*, [1895] 1 Q. B. 918; *Derbyshire* v. *Houliston*, [1897] 1 Q. B. 772); see also *R.* v. *Stoddart* (1909), 25 T. L. R. 612, C. C. A.

(*g*) *Woodfall's Case* (1770), 20 State Tr. 895, at p. 919, *per* Lord MANSFIELD, C.J.; *R.* v. *Philipps* (1805), 6 East, 464.

(*h*) *R.* v. *Farnborough*, [1895] 2 Q. B. 484, C. C. R.; *R.* v. *Lynch* (1903), *per* Lord ALVERSTONE, C.J., Official Report, 151. Thus, if a person utters a forged bill knowing that it is forged, and meaning that the bill should be taken as a genuine bill, the inevitable conclusion is that he intended to defraud (*R.* v. *Hill* (1838), 8 C. & P. 274; *R.* v. *Cooke* (1838), *ibid.* 582).

(*i*) It is a "universal principle that when a man is charged with doing an act of which the probable consequence may be highly injurious, the intention is an inference of law resulting from doing the act," see *R.* v. *Dixon* (1814), 3 M. & S. 11, *per* Lord ELLENBOROUGH, C.J., at p. 15; *R.* v. *Hicklin* (1868), L. R. 3 Q. B. 360, at p. 375; *Miles* v. *Hutchings*, [1903] 2 K. B. 714; and compare *R.* v. *Meade*, [1909] 1 K. B. 895.

(*k*) *E.g.*, by acting in self-defence or in the exercise of some legal duty or right; see p. 608, *post*.

(*a*) See p. 238, *post*.

(*b*) *R.* v. *Tolson* (1889), 23 Q. B. D. 168, C. C. R.; *R.* v. *Prince* (1875), L. R. 2 C. C. R. 154; *Aberdare Local Board* v. *Hammett* (1875), L. R. 10 Q. B.

When *mens rea* not necessary.

Motive.

506. There are certain offences in the prosecution of which proof of a particular intent or state of mind is not incumbent on the prosecution (*c*). In some of these cases the defendant may excuse himself by proving that his intent or state of mind was innocent (*d*). But in others, no such excuse is available (*e*).

The prosecution may prove, but are not bound to prove, the motive for a crime, and, even in cases where innocence of intention is a defence, innocence of motive is no defence (*f*). An act which

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162; see *Bank of New South Wales* v. *Piper*, [1897] A. C. 383, P. C., at p. 389, and *infra*. Under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), ss. 5, 6, 7, the defence of reasonable cause of belief is available in certain cases when the act is not morally innocent (see pp. 616, 617, 623, *post*).

(*c*) *E.g.*, indictable nuisances (see *R.* v. *Stephens* (1866), L. R. 1 Q. B. 702). In the case of a sale by a keeper of licensed premises of intoxicating liquor to a drunken person, proof of knowledge by the accused of the condition of the person is not necessary (*Cundy* v. *Le Cocq* (1884), 13 Q. B. D. 207); where possession of unsound meat for the purpose of sale and intended for human food is shown, proof of knowledge by the accused of the condition of the meat is unnecessary (*Blaker* v. *Tillstone*, [1894] 1 Q. B. 345, and see title FOOD AND DRUGS); in a prosecution for an assault on a constable in the execution of his duty, proof of knowledge of the accused that the constable was so acting is unnecessary (*R.* v. *Forbes* (1865), 10 Cox, C. C. 362; *R.* v. *Maxwell* (1909), 73 J. P. 176).

(*d*) In prosecutions for some of the offences under the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 11, the onus of proving the absence of fraudulent intention is expressly cast on the defendant (see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 354). So, in a prosecution under the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2 (2) (*Christie, Manson and Woods* v. *Cooper*, [1900] 2 Q. B. 522; and see p. 568, *post*).

(*e*) Under this head fall many indictable nuisances, the procedure in which is only in form criminal (see *R.* v. *Stephens* (1866), L. R. 1 Q. B. 702). A prosecution for trespass in pursuit of game is also criminal in form, but has for its object the security of a civil right; in such a prosecution *bonâ fide* belief by the defendant that he was not a trespasser is no defence (*Morden* v. *Porter* (1860), 7 C. B. (N. S.) 641; *Watkins* v. *Major* (1875), L. R. 10 C. P. 662). There are a number of cases analogous to public nuisances, where an act is peremptorily forbidden and innocence of intention or mistaken belief is no defence (*R.* v. *Bishop* (1880), 5 Q. B. D. 259, C. C. R.). In prosecutions under the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), a person who sells an adulterated or "altered" article of food may be convicted, although he does not know of the adulteration or alteration (*Betts* v. *Armstead* (1888), 20 Q. B. D. 771; *Pain* v. *Boughtwood* (1890), 24 Q. B. D. 353; *Dyke* v. *Gower*, [1892] 1 Q. B. 220; *Morris* v. *Corbett* (1892), 56 J. P. 649; *Brown* v. *Foot* (1892), 61 L. J. (M. C.) 110; *Parker* v. *Alder*, [1899] 1 Q. B. 20). In a prosecution under s. 2 of the Intoxicating Liquors (Sale to Children) Act, 1901 (1 Edw. 7, c. 27), which makes it an offence for a licensed person to sell intoxicating liquor to a child under fourteen except in a vessel properly corked or sealed, *bonâ fide* belief on the part of the licensed person that the vessel in which the liquor was sold was properly corked and sealed is no defence (*Brooks* v. *Mason*, [1902] 2 K. B. 743). So mere possession of a prohibited article may be criminal without knowledge (see *R.* v. *Marsh* (1824), 2 B. & C. 717 (possession of game by carrier); *R.* v. *Woodrow* (1846), 15 M. & W. 404 (possession of adulterated tobacco by dealer)). Most of these cases where ignorance or innocence of intention is no defence are cases punishable by fines, and many of them are only punishable on summary conviction before magistrates.

(*f*) Intention is an operation of the will directing an overt act; motive is the feeling which prompts the operation of the will, the ulterior object of the person willing; *e.g.*, if a person kills another, the intention directs the act which causes death, the motive is the object which the person had in view, *e.g.*, the satisfaction of some desire, such as revenge etc. (see Stephen, History of the Criminal Law, Vol. II., 110).

SECT. 1. The Nature of Crime in General.

is unlawful cannot in law be excused on the ground that it was committed from a good motive (*g*).

SUB-SECT. 3. *Grounds of Defence and Exemptions from Criminal Liability.*

Mistake or ignorance.

507. *Bonâ fide* mistake or ignorance as to matters of fact may be available as a defence (*h*). Ignorance of law cannot be set up as a defence even by a foreigner (*i*), although it may be a ground for the mitigation of sentence (*k*).

A continuous act or proceeding, not originally unlawful, commenced before the passing of a statute which prohibits it, cannot be treated as unlawful by reason of the passing of the statute, until a reasonable time has been allowed for the discontinuance of the act or proceeding; and in considering what is a reasonable time for such discontinuance the question whether a person is or is not ignorant of the passing of the statute or whether his ignorance is in the circumstances excusable may be taken into account (*l*).

In cases where a particular intent or state of mind is of the essence of an offence, a mistaken but *bonâ fide* belief by a defendant that he had a right to do a particular act may be a complete defence as showing that he had no criminal intent (*m*).

Accident.

508. The defence of accident or "inadvertence without culpability" is available in all those cases in which a particular intent or state of mind is of the essence of the offence. A person who is accused of such an offence may excuse himself by showing that, although he did the act or made the omission which is the subject

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(*g*) Thus, to a charge of publishing an obscene libel, if the publication is in fact obscene, it is no defence that the defendant had a good motive, *e.g.*, to expose the evils of the confessional (*R.* v. *Hicklin* (1868), L. R. 3 Q. B. 360; *Steele* v. *Brannan* (1872), L. R. 7 C. P. 261). In a prosecution for an indecent assault or abduction it is no defence that the defendant's motives were pure, *e.g.*, to draw the attention of the public to the prevalence of alleged evils (*R.* v. *Jarrett*, *Times*, 9th November, 1885, p. 3, 11th November, 1885, p. 3; C. C. C. Sessions Papers, October, 1885), and see p. 622, *post*. If a person removes a corpse from a grave without lawful authority, it is no defence to such a person that he acted from pious and laudable motives (*R.* v. *Sharpe* (1857), Dears. & B. 160). And if a duty is imposed by law and the breach of the duty is made punishable, a defendant who is charged with the breach cannot set up as a defence that he has a "conscientious objection" to perform the duty which was imposed (*R.* v. *Downes* (1875), 1 Q. B. D. 25, C. C. R.; *R.* v. *Senior*, [1899] 1 Q. B. 283, C. C. R.); but see the Vaccination Act, 1898 (61 & 62 Vict. c. 49), and title PUBLIC HEALTH.

(*h*) 1 Hale, P. C. 42; 4 Bl. Com. 27; *Levett's Case* (1639), Cro. Car. 538; *R.* v. *Petch* (1909), 25 T. L. R. 401.

(*i*) *R.* v. *Esop* (1836), 7 C. & P. 456; *Barronet's Case* (1852), 1 E. & B. 1. As to alien enemies, see p. 273, *post*.

(*k*) *R.* v. *Crawshaw* (1860), Bell, C. C. 303.

(*l*) *Burns* v. *Nowell* (1880), 5 Q. B. D. 444, C. A., *per* BAGGALLAY, L.J., at p. 454; see *Bailey's Case* (1800), Russ. & Ry. 1.

(*m*) 2 East, P. C. 659; *R.* v. *Hall* (1828), 2 Russell on Crimes, 216; 3 C. & P. 409; *R.* v. *Knight* (1781), 2 East, P. C. 510; *R.* v. *Twose* (1879), 14 Cox, C. C. 327; *R.* v. *Rutter* (1908), 25 T. L. R. 73, C. C. A. See the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 52, which makes it an offence wilfully and maliciously to commit any damage etc. upon any real or personal property, but excepts all cases where a person acts under a fair and reasonable supposition that he had a right to do the act complained of. See *Watkins* v. *Major* (1875), L. R. 10 C. P. 662. S. 52 only relates to summary proceedings.

of the charge, he did it while he was acting lawfully and through inadvertence and without culpable negligence (*n*).

Consent.

509. In some cases where the criminal act charged consists of trespass to the person or to property, the consent of the person injured is a complete defence. Thus, to constitute an assault an act must be against the consent of the person to whom it is done (*a*), and to constitute larceny property must be taken *invito domino* (*b*).

Consent is no defence where it has been obtained by fraud or threats or violence (*c*). In the case of children and others of defective intellect, submission to an unlawful act in ignorance of its nature does not amount to consent (*d*). As regards some crimes there is express statutory provision that the consent of children under a certain age is not to be available as a defence (*e*).

There are many other crimes as to which the consent of the person injured is no defence. Thus, it is not in the power of anyone to give a consent, effectual to bar a criminal prosecution, to an act which amounts to or has a direct tendency to create a breach of the peace (*f*), or to an act which amounts to mayhem (*g*) or to murder (*h*).

SECT. 2.—*Criminal Capacity.*

SUB-SECT. 1.—*Infancy.*

Infants.

510. Criminal liability cannot be imputed to an infant under the age of seven years. There is an irrebuttable presumption of law that a child under that age is incapable of committing a crime (*i*).

If an infant between the age of seven and fourteen years commits an act which in the case of a person over fourteen years of age would amount to a felony or to some other offence of which *animus malus* is an essential ingredient, there is a presumption of law that the infant had not sufficient capacity to know that what he did was wrong; but this presumption may be rebutted by evidence, and on such evidence being given the infant may be criminally liable. Knowledge that he was doing what was wrong cannot be presumed from the mere commission of the act, but may

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(*n*) 1 Hale, P. C. 38; 4 Bl. Com. 26; *Batting* v. *Bristol and Exeter Rail. Co.* (1861), 3 L. T. 665; *R.* v. *Noakes* (1866), 4 F. & F. 920; *R.* v. *Finney* (1874), 12 Cox, C. C. 625.

(*a*) *R.* v. *Guthrie* (1870), L. R. 1 C. C. R. 241, *per* BOVILL, C.J., at p. 243; *R.* v. *Coney* (1882), 8 Q. B. D. 534, C. C. R., *per* HAWKINS, J., at p. 553; *R.* v. *Lock* (1872), L. R. 2 C. C. R. 10, *per* BRETT, J., at p. 13.

(*b*) See *M'Daniel's Case* (1755), 19 State Tr. 746. As to cases where the taking possession was not against the will of the owner, but the prisoner had from the beginning an intent to steal, see p. 636, *post*.

(*c*) See pp. 606, 612, *post*.

(*d*) *R.* v. *Lock* (1872), L. R. 2 C. C. R. 10; *R.* v. *Barratt* (1873), L. R. 2 C. C. R. 81.

(*e*) See pp. 615—619, *post*.

(*f*) *R.* v. *Coney*, *supra*.

(*g*) See p. 607, *post*.

(*h*) If two persons agree to commit suicide together, and one accordingly kills himself but the other recovers, the survivor is guilty of murder (see p. 573, *post*).

(*i*) 1 Hale, P. C. 27; 4 Bl. Com. 23; *Marsh* v. *Loader* (1863), 14 C. B. (N. S.) 535. See Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 10.

SECT. 2. Criminal Capacity.

be proved by the circumstances attending the act and the manner in which it was done (*k*).

Presumption in cases of rape.

There is, however, an irrebuttable presumption that a boy under the age of fourteen years is incapable of having carnal knowledge (*l*); he therefore cannot be convicted of committing rape (*m*); nor can he be convicted of the felony of having unlawful carnal knowledge of a girl under the age of thirteen, nor can he be convicted of the attempt to commit either of these crimes (*n*). Evidence cannot be given that a boy under fourteen is physically capable of committing either of these crimes (*o*).

Persons over fourteen.

511. All persons over the age of fourteen years are presumed to possess a sufficient degree of reason to be responsible for crimes, unless the contrary is proved (*p*). Therefore, an infant over that age is in most respects, as regards criminal liability, in the same position as a person of full age (*q*), except when a crime is such that it can only be committed by a person of full age (*r*). He may be guilty of larceny as a bailee, although he cannot enter into a contract of bailment (*s*).

(*k*) *E.g.*, by evidence of design, concealment, exceptional ferocity (1 Hale, P. C. 25, 26; Fitzherbert, Grand Abridgment, tit. Corone, 57; *R.* v. *York* (1748), Fost. 70; *R.* v. *Owen* (1830), 4 C. & P. 236; *R.* v. *Wild* (1835), 1 Mood. C. C. 452; *R.* v. *Smith* (1845), 1 Cox, C. C. 260; *R.* v. *Vamplew* (1862), 3 F. & F. 520; *R.* v. *Kershaw* (1902), 18 T. L. R. 357).

(*l*) Compare the rule that no male under the age of fourteen can contract a valid marriage. See title HUSBAND AND WIFE.

(*m*) *R.* v. *Groombridge* (1836), 7 C. & P. 582. But he can be found guilty of being a principal in the second degree, when he assists a person over the age of fourteen to commit a rape (*R.* v. *Eldershaw* (1828), 3 C. & P. 396, *per* VAUGHAN, B). As to rape, see p. 611, *post*, and as to unnatural offences, see p. 540, *post*.

(*n*) *R.* v. *Waite*, [1892] 2 Q. B. 600, C. C. R.; *R.* v. *Williams*, [1893] 1 Q. B. 320, C. C. R. But if he is charged with committing a rape, he may be found guilty of a common or indecent assault (*R.* v. *Brimilow* (1839), 9 C. & P. 366; Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 9); and if he is charged with the felony of having unlawful carnal knowledge of a girl under thirteen, he may be found guilty of an indecent assault (*R.* v. *Williams*, *supra*). It is doubtful whether he can be found guilty of an assault with intent to commit a rape (see *R.* v. *Eldershaw* (1838), 3 C. & P. 396; *R.* v. *Philips* (1839), 8 C. & P. 736; *R.* v. *Waite*, *supra*; *R.* v. *Williams*, *supra*).

(*o*) *R.* v. *Philips*, *supra*; *R.* v. *Jordan* (1839), 9 C. & P. 118.

(*p*) *R.* v. *Oxford* (1840), 9 C. & P. 525; *M'Naghten's Case* (1843), 10 Cl. & Fin. 200, H. L.

(*q*) 1 Hale, P. C. 25. It is doubtful whether an infant can be indicted for a forcible entry or for a misprision (1 Hale, P. C. 21; 4 Bac. Abr., tit. Infancy H, 7th ed., 352). It seems that if a person is liable *ratione tenuræ* to repair a highway, infancy is no defence to an indictment for non-repair, and that this applies even to infants under the age of fourteen (*R.* v. *Sutton* (1835), 3 Ad. & El. 597; 2 Co. Inst. 703, s. 5). The statement in 4 Bl. Com. 22 that "the law of England does in some cases privilege an infant under the age of twenty-one as to common misdemeanours, so as to escape fine, imprisonment and the like, particularly in cases of omissions in not repairing a bridge or a highway and other similar offences," is not consistent with the passage in 1 Hale, P. C. 20, 21, 22, which Blackstone cites as an authority for his statement; see *R.* v. *Sutton*, *supra*, at pp. 601—602.

(*r*) *E.g.*, an infant cannot be adjudicated a bankrupt, except, perhaps, on a debt for necessaries (see title BANKRUPTCY, Vol. II., p. 11). An infant cannot be convicted of criminal offences under the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 12 (see *R.* v. *Wilson* (1879), 5 Q. B. D. 28, C. C. R.).

(*s*) *R.* v. *McDonald* (1885), 15 Q. B. D. 323, C. C. R.

SUB-SECT. 2.—*Insanity.*

SECT. 2. Criminal Capacity. Insanity.

512. Where it can be shown that a person at the time of his committing or omitting an act, the commission or omission of which would otherwise be criminal, was labouring under such a defect of reason, from disease of the mind, as not to know the nature or quality of the act or omission, or as not to know that he was doing what was wrong, then such a person is not in law responsible for his act (*a*).

The question whether a prisoner, at the time when he committed an act or made an omission, was or was not insane so as not to be responsible according to law for his actions is a question of fact which the jury must determine under the direction of the judge (*b*).

If the person accused is proved to have had, at the time of the act or omission charged, no mind at all, or to have been suffering from delirium, then the jury may properly conclude that he was not responsible in law for his actions (*c*).

The defence of insanity may be set up, when the accused is only partially insane (*d*). If a person is only partially insane, and it is proved by evidence that he suffered from delusions, then he is for the purposes of criminal responsibility to be considered in the same situation as though the facts to which his delusions relate had really existed (*e*).

If the facts which he supposes in his delusion to exist would justify the act or omission, if they had really existed, then he is to be excused; if they would not, then he is responsible at law for his actions (*e*).

(*a*) *M'Naghten's Case* (1843), 10 Cl. & Fin. 200, H. L.; *R.* v. *Offord* (1831), 5 C. & P. 168; *R.* v. *Goode* (1837), 7 Ad. & El. 536; *R.* v. *Oxford* (1840), 9 C. & P. 525; *R.* v. *Higginson* (1843), 1 Car. & Kir. 129; *R.* v. *Layton* (1849), 4 Cox, C. C. 149; *R.* v. *Richards* (1858), 1 F. & F. 87; *R.* v. *Davies* (1858), 1 F. & F. 69; *R.* v. *Townley* (1863), 3 F. & F. 839; *R.* v. *Law* (1862), 2 F. & F. 836; *R.* v. *Vyse* (1862), 3 F. & F. 247; *R.* v. *Leigh* (1866), 4 F. & F. 915; *R.* v. *Dixon* (1869), 11 Cox, C. C. 341; *R.* v. *Southey* (1865), 4 F. & F. 864; *R.* v. *Pate* (1850), 8 St. Tr. (N. S.) 1.

(*b*) The question of insanity being one of fact, there was, before the passing of the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), no legal authority on the subject other than the summings-up of the judges (see the cases collected in note (*a*), *supra*, and the answers of the judges in *M'Naghten's Case*, *supra*); these answers were given to the House of Lords extra-judicially, and their authority is doubtful (see Stephen, History of the Criminal Law, Vol. II., p. 153). One of these answers (the 5th) was criticised by ALDERSON, B., in *R.* v. *Frances* (1849), 4 Cox, C. C. 57. An appeal now lies to the Court of Criminal Appeal on the ground of the insanity of the defendant, see p. 436, *post*.

(*c*) See *R.* v. *Townley* (1863), 3 F. & F. 839, *per* MARTIN, B., at p. 846.

(*d*) Insanity may be either congenital and permanent (*dementia naturalis*)—this is the state of idiots whose mental faculties have never grown—or it may be the darkening of mental faculties which have reached a certain stage of growth (*dementia accidentalis*) (1 Hale, P. C. 29). This latter variety of the disease may be total or partial, permanent or occasional. In most cases of this kind the disease is partial or occasional, and it is in reference to these cases that difficulties arise in determining whether a person is responsible in law for his actions (Taylor, Medical Jurisprudence, 5th ed., Vol. I., p. 878). Moreover, insanity is a disease of the mind, and has often no other objective symptoms than the actions of the person suffering from its influence. See title LUNATICS AND PERSONS OF UNSOUND MIND.

(*e*) See the opinion of the majority of the judges in *M'Naghten's Case*, *supra* (4th question). Compare *R.* v. *Pate* (1850), 8 State Tr. (N. S.) 1, *per* ALDERSON, B., at p. 47.

SECT. 2. Criminal Capacity.

Moral insanity.

513. To show that a person was, at the time when he committed an act or made an omission, insane so as not to be responsible in law for his actions, proof must be given of the existence of disease of the mind or intellectual insanity: neither "moral insanity," *i.e.*, the state when the intellectual faculties are sound and the moral faculties diseased (*f*), nor a mere "uncontrollable impulse of the mind" co-existing with the full possession of the reasoning faculties, is any defence (*g*).

Onus of proof.

514. The onus of establishing insanity is on the accused; affirmative evidence must be given by medical or other witnesses showing that he was suffering from mental disease at the time or shortly before or after the act or omission charged (*h*).

The mere fact that an act or omission is without apparent motive is not by itself sufficient to establish insanity (*i*). But if there is other evidence of insanity, such a fact may be of importance as helping to prove insanity (*k*).

Special verdict.

515. Insanity is not an absolute defence in the case of a person charged with a crime. If insanity is proved in such a case, a jury cannot now, as they could formerly, acquit the accused, but they may bring in a special verdict that he was guilty of the act or omission charged against him, but was insane so as not to be responsible according to law for his actions, at the time when the act was done or the omission made. The result of this verdict is that the court orders the accused to be kept in custody as a criminal lunatic, till the King's pleasure is known (*l*).

SUB-SECT. 3.—*Drunkenness.*

Delirium tremens.

516. A person suffering from *delirium tremens*, which so affects his mind that he is not conscious of the nature of an act which he commits, who does a criminal act without knowing that it is wrong, is entitled, when on his trial for such an act, to the same verdict as if he had been suffering from insanity (*m*).

Drunkenness.

517. A person who becomes drunk as the result of his own voluntary act, and while drunk commits a crime, is not excused for

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(*f*) *R.* v. *Burton* (1863), 3 F. & F. 772.

(*g*) *R.* v. *Barton* (1848), 3 Cox, C. C. 275.

(*h*) Expert evidence is not indispensably necessary (*R.* v. *Dart* (1878), 14 Cox, C. C. 143). As to the nature of the questions which it is permissible to ask a medical witness on the subject of insanity, see *Wright's Case* (1821), Russ. & Ry. 456; *R.* v. *Searle* (1831), 1 Mood. & R. 75; *M'Naghten's Case* (1843), 10 Cl. & Fin. 200, H. L. (5th question); *R.* v. *Frances* (1849), 4 Cox, C. C. 57.

(*i*) *R.* v. *Barton* (1848), 3 Cox, C. C. 275; *R.* v. *Haynes* (1859), 1 F. & F. 666.

(*k*) *R.* v. *Vyse* (1862), 3 F. & F. 247.

(*l*) Trial of Lunatics Act, 1883 (46 & 47 Vict. c. 38), s. 2; and see title LUNATICS AND PERSONS OF UNSOUND MIND. The defence of insanity is in practice generally limited to those charges in respect of which the penalty of death may be inflicted (see *R.* v. *Reynolds* (1843), Taylor, Medical Jurisprudence, 5th ed., Vol. I., p. 870). As to the procedure in case of a prisoner being insane after his committal or at the time of his trial, see p. 354, *post*.

(*m*) *R.* v. *Davis* (1881), 14 Cox, C. C. 563. A person suffering from temporary delirium caused by some bodily disease would, it seems, be in the same position.

the crime by reason of his drunkenness alone (*n*); for a person, although drunk, may be capable of forming an intention and therefore of committing an act. But a person may by drunkenness be rendered entirely incapable of forming an intention, and drunkenness may therefore, even though voluntary, sometimes be used as a defence for the purpose of rebutting the presumption of a criminal intention which would otherwise arise from an act; such presumption is deemed to be rebutted, where it is shown that the accused's mind was so affected by drink that he was incapable of knowing that what he was doing was dangerous or wrongful (*o*).

SUB-SECT. 4.—*Coercion.*

Compulsion.

518. A person compelled by physical force to do an act which, if voluntarily done, would be a crime, is free from criminal responsibility, but the person compelling him is criminally liable (*p*).

Threats.

The use of threats inducing a person, from present fear of death, to join with rebels is, it seems, an excuse, so long as the person is under the influence of such fear (*q*). Subject to this exception, a person who commits a crime when influenced by threats or "moral force," or by the confinement of his person, or by violence not amounting to actual compulsion, is not excused (*r*).

Obedience to authority.

The mere fact that a person does a criminal act in obedience to the order of a duly constituted superior does not excuse the person who does the act from criminal liability, but the fact that a person does an act in obedience to a superior whom he is bound to obey, might exclude the inference of malice or wrongful intention which might otherwise follow from the act (*s*).

(*n*) *Pearson's Case* (1835), 2 Lew. C. C. 144. *Aliter* of a person who is made drunk by the stratagem or fraud of another (*ibid.*, *per* PARK, J., at p. 145).

(*o*) See *R.* v. *Meade*, [1909] 1 K. B. 895; *R.* v. *Grindley* (1819), 1 Russell on Crimes, 6th ed., 144; *Burrow's Case* (1823), 1 Lew. C. C. 75; *Rennie's Case* (1823), 1 Lew. C. C. 76; *Marshall's Case* (1830), 1 Lew. C. C. 76; *Goodier's Case* (1831), cited in *Marshall's Case*, *supra*; *Pearson's Case* (1835), 2 Lew. C. C. 144; *R.* v. *Carroll* (1835), 7 C. & P. 145, *per* PARK, J., at p. 147; *R.* v. *Meakin* (1836), 7 C. & P. 297; *R.* v. *Thomas* (1837), 7 C. & P. 817; *R.* v. *Cruse* (1838), 8 C. & P. 541, *per* PATTESON, J., at p. 546; *R.* v. *Monkhouse* (1849), 4 Cox, C. C. 55; *R.* v. *Doherty* (1887), 16 Cox, C. C. 306; *R.* v. *Moore* (1852), 3 Car. & Kir. 319; *R.* v. *Doody* (1854), 6 Cox, C. C. 463. A person who, unconsciously, in a state of drunken sleep does an act which causes the death of another is not criminally liable for the act (*R.* v. *Byron* (1863), Taylor, Medical Jurisprudence, 5th ed. 814).

(*p*) 1 Hale, P. C. 434; and see p. 234, *ante*.

(*q*) 1 East, P. C. 70. The fear of having houses burnt or goods spoiled is no excuse (*MacGrowther's Case* (1746), 18 State Tr. 391).

(*r*) See 1 East, P. C. 70; *R.* v. *Tyler* (1838), 8 C. & P. 616. Compulsion from necessity arising from hunger is no excuse for a crime (*R.* v. *Dudley* (1884), 14 Q. B. D. 273). As to necessity as a justification, see *R.* v. *Stratton* (1779), 21 State Tr. 1046, at pp. 1223, 1230. As to acts done under martial law, see *post*, p. 271, note (*c*). As to acts done by a servant in cases under the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), see s. 19 (3) of that Act.

(*s*) 1 Hale, P. C. 43, 44. If the law laid down in *Axtell's Case* (1660), Kel. 13, *Cook's Case* (1660), 5 State Tr. 1077, 1113, and *Vane's* (*Sir Henry*) *Case* (1662), Kel. 14, is correct or applicable to the present time, obedience to a *de facto* government, which is not royal, does not necessarily afford a defence. The statute (1495) 11 Hen. 7, c. 1, excuses the obedience paid to a *de facto* king,

SECT. 2.

Criminal Capacity.

SUB-SECT. 5.—*Husband and Wife.*

Presumption of coercion.

519. If husband and wife act together in committing certain crimes and the wife acts in the presence of her husband, there is a presumption that the wife acted under the coercion of her husband, and if she is tried for such an act, she is *primâ facie* entitled to an acquittal (*t*).

This rule applies to larceny, burglary (*a*), robbery with violence (*b*), receiving stolen goods (*c*), felonious wounding (*d*), and uttering counterfeit coins or forged notes (*e*).

The rule does not apply to murder or treason (*f*), or to a mere assault (*g*), or false swearing (*h*), or to such offences as keeping a disorderly house (*i*) or a gaming house (*k*), or to acts committed by a wife in the absence of her husband (*l*).

The presumption is *primâ facie* only, and may be rebutted by evidence that the wife was the instigator of the act or the more active party, or that the husband, though present, was incapable of coercing her as being the weaker of the two or a cripple or bed-ridden (*m*).

SUB-SECT. 6.—*Privileged Persons.*

The King exempt from criminal jurisdiction.

520. The King is exempt from all criminal liability. As he can do no wrong, he cannot be called to account criminally any

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but does not, according to those cases, apply where there is no king *de facto*. A soldier who in obedience to the order of a superior officer did an act which would otherwise be criminal would probably be excused, if the soldier might fairly suppose that the officer had good reasons for giving the order (see Stephen, History of Criminal Law, Vol. I., 205); as to disobedience by a soldier to a lawful command of a superior officer, see Army Act, 1881 (44 & 45 Vict. c. 58), s. 9.

(*t*) 1 Hale, P. C. 44; *Anon.* (1665), Kel. 31; *R.* v. *Hamilton* (1784), 1 Leach, 348; *R.* v. *Archer* (1826), 1 Mood. C. C. 143; *R.* v. *Conolly* (1829), Matthews, Digest of Criminal Law, 262; *R.* v. *Price* (1837), 8 C. & P. 19; *R.* v. *Smith* (1858), Dears. & B. 553; *R.* v. *Torpey* (1871), 12 Cox, C. C. 45; *R.* v. *Dykes* (1885), 15 Cox, C. C. 771. As to proof of marriage in such a case, see p. 389, n., *post*.

(*a*) 1 Hale, P. C. 44.

(*b*) *R.* v. *Torpey, supra*; *R.* v. *Dykes, supra*.

(*c*) *R.* v. *Archer, supra*; *R.* v. *Matthews* (1850), 1 Den. 596; *R.* v. *Wardroper* (1860), Bell, C. C. 249.

(*d*) *R.* v. *Smith, supra*.

(*e*) *R.* v. *Conolly, supra*; *R.* v. *Price, supra*; *R.* v. *Atkinson* (1814), 1 Russell on Crimes, 6th ed., 147, 159.

(*f*) 1 Hale, P. C. 44; but see *R.* v. *Alison* (1838), 8 C. & P. 418, at p. 423; 1 Russell on Crimes, 6th ed., 146, n.

(*g*) *R.* v. *Ingram* (1712), 1 Salk. 384; *R.* v. *Cruse* (1838), 8 C. & P. 541; but see *R.* v. *Torpey, supra*, at p. 49.

(*h*) *R.* v. *Dicks* (1781), 1 Russell on Crimes, 6th ed., 147, n.

(*i*) *R.* v. *Williams* (1712), 1 Salk. 384.

(*k*) *R.* v. *Dixon* (1716), 10 Mod. Rep. 335.

(*l*) *Hammond's Case* (1787), 1 Leach, 444; *R.* v. *Hughes* (1813), 2 Lew. C. C. 229; *R.* v. *Morris* (1814), Russ. & Ry. 270; *R.* v. *Robson* (1861), 1 Le. & Ca. 93; *Brown* v. *A.-G. for New Zealand*, [1898] A. C. 234, P. C.

(*m*) 1 Russell on Crimes, 6th ed., 154, n.; *R.* v. *Pollard* (1838), 8 C. & P. 553, n. The relationship of husband and wife affects the criminal liability of the wife, and even of the husband in some cases. Thus, husband and wife being in law one person, a conspiracy by them alone to do an unlawful act is not a criminal conspiracy for which they can be indicted, although husband and wife

more than he can civilly; no court has any coercive power over him (*n*).

By the comity of nations a reigning sovereign of another State is treated as exempt from the criminal as well as the civil jurisdiction of all other countries (*o*).

Reigning sovereigns of foreign countries.

No one but a sovereign is personally exempt in England from criminal jurisdiction to which all persons who reside in the country, whether subjects or aliens, are liable (*p*).

521. The exemption of ambassadors of foreign States, their servants and retinue, from the criminal jurisdiction of the country to which they are accredited, though asserted by writers on international law (*q*), is not sanctioned by the English courts or by any authority on English criminal law (*r*).

Ambassadors.

522. The privileges of Parliament do not apply to criminal matters, and members of either House are subject to the ordinary course of criminal justice (*s*). But no member of either House of Parliament can be made criminally liable for anything said by him in his place in the House while the House is sitting (*t*).

Members of Houses of Parliament.

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may be indicted for conspiring with other persons (1 Hawk. P. C., c. 27, s. 8; *R.* v. *Cope* (1719), 1 Stra. 144). A married woman cannot be convicted of being accessory after the fact to her husband's felony (see p. 256, *post*), or of receiving stolen goods from her husband (p. 679, *post*). There cannot be a criminal prosecution for a libel by a husband on his wife, or *vice versâ* (see title LIBEL AND SLANDER), and only in certain events can either be convicted of stealing the goods of the other (p. 634, *post*). As to the husband giving evidence against his wife, and *vice versâ*, see p. 405, *post*.

(*n*) *R.* v. *Cook* (1660), 5 State Tr. 1077, 1113; *Tobin* v. *R.* (1864), 33 L. J. (C. P.), *per* ERLE, C.J., at p. 205.

(*o*) Wheaton, International Law, 4th ed., p. 153; *The Parlement Belge* (1880), 5 P. D. 197, C. A.; *Mighell* v. *Sultan of Johore*, [1894] 1 Q. B. 149, C. A. A deposed, exiled, or fugitive sovereign who takes refuge in England would, it seems, be liable to the criminal jurisdiction of the country (see the *Proceedings against Mary Queen of Scots* (1586), 1 State Tr. 1161).

(*p*) As to the territorial limits of criminal jurisdiction, see p. 272, *post*. As to acts done in England by alien enemies, see note (*h*), p. 273, *post*.

(*q*) Wheaton, International Law, 331. And see title CONSTITUTIONAL LAW, Vol. VI., p. 429.

(*r*) See 1 Hale, P. C. 99; *Don Pantaleon Sa's Case* (1654), 5 State Tr. 461; Fost. 187; *Owen's Case* (1615), 2 State Tr. 881; *Magdalena Steam Navigation Co.* v. *Martin* (1859), 28 L. J. (Q. B.) 310, *per* WIGHTMAN, J., at p. 313; Law Magazine and Review, 4th Series, Vol. XX., 43. The Diplomatic Privileges Act, 1708 (7 Ann. c. 12), does not, it seems, apply to criminal process.

(*s*) See *Bradlaugh* v. *Gossett* (1884), 12 Q. B. D. 271, *per* STEPHEN, J., at p. 283; *Elliot's Case* (1629), 3 State Tr. 293; *Jay and Topham's Case* (1689), 12 State Tr. 822; *Burdett* v. *Abbot* (1811), 14 East, 1; (1817) 5 Dow, 165, H. L. The privilege of members of Parliament from arrest does not apply to criminal process (*Long Wellesley's Case* (1831), 2 Russ. & M. 639, 665; Erskine May, Parliamentary Practice, 11th ed., 120).

(*t*) See stat. (1512) 4 Hen. 8, c. 8. "The freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament" (Bill of Rights, 1 Will. & Mar., sess. 2, c. 2). So members of Parliament are not either civilly or criminally liable to the jurisdiction of the ordinary courts for a conspiracy to deceive Parliament by making false speeches in Parliament (*Ex parte Wason* (1869), L. R. 4 Q. B. 573).

SECT. 3. Degrees of Criminal Liability.

SECT. 3.—*Degrees of Criminal Liability.*

SUB-SECT. 1.—*Classification of Crimes.*

523. Crimes are divided into three classes—treasons, felonies, and misdemeanours.

Treason. The name treason is given to certain crimes which are more particularly directed against the safety of the Sovereign and the State (*a*).

Felonies. All indictable crimes below the degree of treason are either felonies or misdemeanours (*b*).

Felonies are those crimes which are such by common law or have been made such by statute.

Misdemeanours. All crimes which are not treasons or felonies are misdemeanours either by common law or by statute (*c*).

(*a*) As to treason, see title CONSTITUTIONAL LAW, Vol. VI., p. 345, and p. 450, *post*.

(*b*) Offences created by statute and made punishable only on summary conviction are sometimes spoken of as misdemeanours (see *Du Cros* v. *Lambourne*, [1907] 1 K. B. at p. 44; but see Tomlin's Law Dictionary, title Misdemeanour).

(*c*) The most important points of difference between treasons, felonies, and misdemeanours are as follows:—(1) *Accessories.*—In felonies a distinction is drawn between principals and accessories (see p. 248, *post*), but there is no such distinction either in treason or in misdemeanours. (2) *Misprision.*—A person who conceals a treason or felony without consenting to it commits the offence of misprision of treason or felony (see p. 248, *post*); there is no such offence in respect of a misdemeanour. (3) *Compounding a Felony.*—It is a criminal offence to compound a felony, *i.e.*, to agree not to prosecute (see p. 503, *post*), but an agreement not to prosecute for a misdemeanour, though unlawful in many cases (see *Collins* v. *Blantern* (1767), 1 Smith, L. C., 11th ed., 369) is not criminal, unless it amounts to a conspiracy to obstruct or defeat the course of justice (see Stephen, History of Criminal Law, Vol. I., p. 502; and see p. 504, *post*). (4) *Arrest.*—If a treason or a felony has been committed, anyone may without a warrant arrest a person against whom there is reasonable ground of suspicion (2 Co. Inst. 52; see p. 296, *post*); a constable may arrest anyone whom he has reasonable ground to suspect of having committed, or being about to commit, a felony (*Beckwith* v. *Philby* (1827), 6 B. & C. 635). In cases of misdemeanour, with some exceptions, there is no power to arrest without a warrant (see p. 298, *post*). (5) *Bail.*—A person accused of treason or felony has no right to be bailed, but the court which has jurisdiction to grant bail may exercise its discretion and grant or refuse bail; a person accused of misdemeanour has an absolute right to bail, if he applies to the High Court of Justice under the Habeas Corpus Act, 1679 (31 Car. 2, c. 2) (*R.* v. *Badger* (1843), 4 Q. B. 468; *Linford* v. *Fitzroy* (1849), 13 Q. B. 240, at p. 246; *R.* v. *Spilsbury*, [1898] 2 Q. B. 615, at p. 622; and see *Re Frost* (1888), 4 T. L. R. 757); a person accused of certain misdemeanours had formerly a right to be bailed by justices of the peace, but now there does not seem any such right except in the case of charges for the non-repair of highways or bridges. A person accused of treason can only be bailed by an order of a Secretary of State or of the High Court or of a judge of the High Court in vacation (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 23; Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 34; Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 19). A person accused of felony or misdemeanour may be bailed by the justices of the peace before whom he is brought or by the court that tries him, or by a judge of the High Court in chambers (see p. 323, *post*). (6) *Copy of Indictment and List of Witnesses.*—A person accused of high treason has a right to the delivery ten days before trial of a copy of the indictment and a list of the witnesses against him (Treason Act, 1695 (7 & 8 Will. 3, c. 3), s. 7; Treason

Degrees of complicity.

524. All who take part in a crime with a guilty intent are criminally liable, whether they are the actual perpetrators of the crime or whether, not being the actual perpetrators, they are present aiding and abetting when it is committed, or whether, though

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Act, 1708 (7 Ann. c. 21), s. 14; *R.* v. *Frost* (1839), 4 State Tr. (N. S.) 85). In prosecutions for misdemeanour the defendant, it seems, is entitled to a copy of the information or indictment (Pleading in Misdemeanour Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 4), s. 8; *Twyn's Case* (1663), 6 State Tr. 518). A person accused of felony has no right to a copy of the indictment (*Proceedings against the Five Popish Lords* (1685), 7 State Tr. 1218, at p. 1243; *Fitzharris's Case* (1681), 8 State Tr. 243, 258; *Rosewell's Case* (1684), 10 State Tr. 266; *Preston's (Viscount) Case* (1691), 12 State Tr. 658; *R.* v. *Dowling* (1848), 3 Cox, C. C. 509; *R.* v. *Mitchel* (1848), 3 Cox, C. C. 1, see 1 Lew. C. C. 205, n.; Fost 228; 2 Hale, P. C. 236; 2 Hawk. P. C., 8th ed., 557). The modern practice, however, is to allow the legal advisers of an accused person to inspect the indictment (*R.* v. *Dowling* (1849), 7 State Tr. (N. S.) 381). As to the right of all persons under trial to copies of depositions, see p. 322, *post*. (7) *Trial.*—(i.) Challenges of jurors. A person in most cases of high treason may peremptorily challenge thirty-five jurors (Treason Act, 1695 (7 & 8 Will. 3, c. 3), s. 2); in murder and all other felonies and in some treasons (compassing the King's death and attempts against the person of the King) the person accused may peremptorily challenge twenty jurors (Juries Act, 1825 (6 Geo. 4, c. 50), s. 29; *Gray* v. *R.* (1844), 6 State Tr. (N. S.) 117; see p. 359, *post*). In misdemeanours there is no right of peremptory challenge, but the defendant may challenge jurors for cause (*Reading's Case* (1679), 7 State Tr. 259, 265; *Cellier's Case* (1680), 7 State Tr. 1183; *Oates's Case* (1685), 10 State Tr. 1080). When a person accused of felony is arraigned and pleads not guilty, the prisoner is told by the clerk of arraigns before the jury are sworn that, if he wishes to challenge them or any of them, he must do so as they come to be sworn. In trials for felony the jurors are consequently sworn separately; whilst in trials for misdemeanour the jurors are often sworn in batches. (ii.) A person accused of felony must during his trial be at the bar of the court, *i.e.*, in "the dock," as it is commonly called in most courts; *aliter* of a person accused of a misdemeanour (*R.* v. *St. George* (1840), 9 C. & P. 483, 485; *R.* v. *Douglas* (1841), Car. & M. 193, at p. 194; *R.* v. *Zulueta* (1843), 1 Car. & Kir. 215; but see *Horne Tooke's Case* (1794), 25 State Tr. 1, 6). (iii.) The form of the oath administered to the jury on the trial of a person for felony is different from the form in the case of a misdemeanour (see p. 362, note (*k*), *post*). (iv.) In an indictment for high treason the prisoner may be charged with different kinds of treason in different counts; an indictment ought not to charge a defendant with several different felonies, although it may charge the same felony in different ways. An indictment which joins a count for felony with a count for misdemeanour is bad (see p. 342, *post*). (v.) A person who in the course of committing a felony causes the death of another may be guilty of murder, while a person who in the course of committing a misdemeanour causes the death of another without the intention of killing him is only guilty of manslaughter (see p. 579, *post*). (8) *Punishment.*—Treason, murder, piracy, and setting fire to the King's ships or arsenals (see p. 409, *post*) are punishable with death, but no misdemeanour is punishable with death. (9) *Consequences of Conviction.*—If a person who is found guilty of treason or felony and is sentenced to death or penal servitude or any term of imprisonment with hard labour, or exceeding twelve months, holds any of certain offices or places or is entitled to certain pensions etc., he forfeits his office, place, pension etc. (see p. 428, *post*). A person convicted of treason or felony may be ordered to make compensation for any loss suffered by a person aggrieved through or by means of the felony (see p. 449, *post*). A person who has been convicted of treason or felony is, while he is under sentence and suffering punishment, disqualified from suing in any action or from alienating or charging his property, and an administrator of his property may be appointed (see p. 429, *post*).

SECT. 3. Degrees of Criminal Liability.

absent when the crime is committed, they had a share in procuring, inciting, counselling, or assisting others to commit the crime (*d*).

In felonies, but not in treasons or misdemeanours, a distinction is drawn between principals, that is, those who are present with a guilty intent, when a crime is committed, and accessories before the fact, that is, those who without being present at the time when a crime is committed, procure its commission or plan or aid in or encourage its execution. In treasons and misdemeanours all persons who aid or abet in the commission of the crime are regarded as principals, whether they are present or absent when it is committed (*e*).

A person who, with knowledge that treason or felony has been committed, comforts and assists the criminal after the crime has been committed is also guilty of a crime.

Those who comfort and assist a criminal after a felony has been committed are liable as accessories after the fact (*f*).

Those who comfort and assist a person who has committed treason and know of the crime are deemed principals (*g*).

A person who merely comforts and assists one who has committed a misdemeanour is not guilty of a crime (*h*).

Principals.

525. All persons who are present, when a felony is committed, and who take a part in the actual perpetration of the offence, or aid and abet those who perpetrate it, are called principals (*i*). Persons who are absent when a felony is committed, but take part in procuring or contriving it, are called accessories before the fact (*j*).

Principals in first degree.

526. There are two kinds of principals—principals in the first degree and principals in the second degree. Those who actually take part in a crime are called principals in the first degree (*k*) and those who are present aiding and abetting, but take no actual part in it, are called principals in the second degree. The distinction between principals in the first degree and principals in the second degree applies to misdemeanours as well as to felonies, but in

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(*d*) Fost. 341, 347.

(*e*) Fost. 341; 1 Hale, P. C. 613; *R.* v. *Clayton* (1843), 1 Car. & Kir. 128; *R.* v. *Moland* (1843), 2 Mood. C. C. 276; *R.* v. *Greenwood* (1852), 2 Den. 453; *R.* v. *Burton* (1875), 13 Cox, C. C. 71; *R.* v. *Waudby*, [1895] 2 Q. B. 482, C. C. R.

(*f*) 1 Hale, P. C. 618; and see p. 256, *post*.

(*g*) 4 Bl. Com. 35.

(*h*) 1 Hale, P. C. 618.

(*i*) All present at the time of committing an offence are principals, though one only acts, if they are confederates and engaged in a common design of which the offence is part (*R.* v. *Tattersal* (1801), 1 Russell on Crimes, 6th ed., 162; see *Young* v. *R.* (1789), 3 Term Rep. 98; *R.* v. *Standley* (1816), Russ. & Ry. 305, C. C. R.; *R.* v. *Sheppard* (1839), 9 C. & P. 121; *R.* v. *Harrington* (1851), 5 Cox, C. C. 231; Fitzherbert's Grand Abridgment, tit. Corone, fol. 249, pl. 86).

(*j*) 1 Hale, P. C. 616. The distinction between principals and accessories before the fact is now of little practical importance, as an accessory before the fact may be indicted as a principal (see p. 257, *post*).

(*k*) See *R.* v. *Standley*, *supra*; *R.* v. *Sheppard*, *supra*; *R.* v. *Hornby* (1844), 1 Car. & Kir. 305.

misdemeanours accessories before the fact are reckoned principals in the second degree (*l*).

SECT. 3. Degrees of Criminal Liability.

Presence not essential.

527. In some cases a person is deemed a principal in the first degree although he was not present when the act was done which makes the offence complete. Thus, if one with a criminal intent contrives an injury to another and by means of the contrivance the person whom it is designed to injure receives the injury in the absence of the contriver, the latter is a principal in the first degree, although he was absent when the injury was actually inflicted (*m*). So a person who employs an innocent agent to commit a felony is a principal in the first degree, although he is not present when the agent does the act which consummates the felony (*n*).

If several persons act together in one common unlawful undertaking and a crime is committed by one of them, but it is not known by whom, all are principals in the first degree (*o*).

A person who with guilty intent is engaged in the execution of any part of a criminal transaction is a principal in the first degree; it is not necessary that he should be present during the entire transaction or when it is completed (*p*).

(*l*) *Du Cros* v. *Lambourne*, [1907] 1 K. B. 40; *R.* v. *De Marny*, [1907] 1 K. B. 388, C. C. R.; *R.* v. *Burton* (1875), 13 Cox, C. C. 71, C. C. R.; *R.* v. *Greenwood* (1852), 2 Den. 453; *R.* v. *Waudby*, [1895] 2 Q. B. 482, C. C. R.; *Benford* v. *Sims*, [1898] 2 Q. B. 64.

(*m*) *E.g.*, if A., with intent to kill B., lays poison in B.'s way, and B. or anyone else in A.'s absence takes it and dies in consequence, A. is a principal in the murder (Fost. 349; Kel. 52). In such a case, if the poison is not taken by anyone, A. is guilty of an attempt to murder (see p. 258, *post*).

(*n*) Fost. 349; Kel. 52; *R.* v. *Michael* (1840), 2 Mood. C. C. 120; *R.* v. *Butcher* (1858), Bell, C. C. 6; *R.* v. *Williams* (1842), Car. & M. 259; *R.* v. *Giles* (1827), 1 Mood. C. C. 166; *R.* v. *Bull* (1845), 1 Cox, C. C. 281; *R.* v. *Clifford* (1845), 2 Car. & Kir. 202; *R.* v. *Manley* (1844), 1 Cox, C. C. 104; *R.* v. *Bleasdale* (1848), 2 Car. & Kir. 765, *per* ERLE, J., at p. 768; *R.* v. *Bannen* (1844), 2 Mood. C. C. 309; *R.* v. *Valler* (1844), 1 Cox, C. C. 84; *R.* v. *Palmer* (1804), 1 Bos. & P. (N. R.) 96. In such cases the act of the innocent agent is deemed to be as much the act of the person who procures it as if the procurer were himself present (*R.* v. *Clifford*, *supra*). If a person being abroad or on the high seas procures an agent to commit a crime in England, the procurer is deemed to have committed the crime in England (*R.* v. *Brisac* (1803), 4 East, 164; *R.* v. *Garrett* (1853), Dears. C. C. 232).

(*o*) In the case of *R.* v. *Salmon* (1880), 6 Q. B. D. 79, C. C. R., three men went into a field near to a road and some houses for the purpose of practising rifle-shooting. They all fired shots with a rifle, and no precautions were taken to prevent danger; one of the shots killed a boy in a garden near the field. It was held that all the three were guilty of manslaughter, although it was not known who fired the shot which killed the boy, all having united to fire at the spot in question, and all having omitted to take precautions to prevent danger. In the case of *R.* v. *Borthwick* (1779), 1 Doug. (K. B.) 207, the jury found that a person was killed by a blow from one of the prisoners, but from which of them the jury did not know; the prisoners were members of a press-gang acting illegally in pressing seamen without a warrant, but there was no finding that the prisoners were all present or that they were all met together on one common illegal design; it was held that the prisoners could not be made responsible for the death of the person killed.

(*p*) *R.* v. *Sheppard* (1839), 9 C. & P. 121; *R.* v. *Kelly* (1847), 2 Car. & Kir. 379; and see *R.* v. *Dyer* (1801), 2 East, P. C. 767. If several persons combine to forge an instrument, each person who executes any part of the forgery is a principal, although he may not know by whom the other parts are executed, and may not be present when the whole forgery is completed (*R.* v. *Bingley*

SECT. 3.
Degrees of Criminal Liability.

Principals in the second degree.

528. All who are present aiding and abetting, when a felony is committed, but who take no part in the actual perpetration of the felony, are principals in the second degree (*q*).

To constitute a principal in the second degree mere presence at the crime is not enough; there must be a common purpose, an intent to aid or encourage the persons who commit the crime and an actual aiding or encouraging (*r*).

A person who is present aiding and abetting may be a principal in the second degree, although he is, or is deemed to be, physically incapable of being a principal in the first degree (*s*).

A person cannot be a principal in the second degree unless a felony has been committed by a principal in the first degree (*t*),

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(1821), Russ. & Ry. 446; *R.* v. *Kirkwood* (1831), 1 Mood. C. C. 304; *R.* v. *Dade* (1831), 1 Mood. C. C. 307). If several persons take part in the actual commission of a crime, the degree of their guilt may vary according to their intent, *e.g.*, if A., intending to murder B., attacks him, and C. enters into the affray unlawfully but suddenly, and without malice aforethought, and B. is killed by A. and C., this is murder by A. and manslaughter by C. (1 Plowd. 101; and see *Mohun's Case* (*Lord*) (1692), 12 State Tr. 949, 1022).

(*q*) *Coalheavers' Case* (1768), 1 Leach, 64; *R.* v. *Towle* (1816), Russ. & Ry. 314. This applies to statutory felonies as well as to felonies at common law (*ibid.*). An indictment against a principal in the second degree may charge him with committing a felony in the same way as a principal in the first degree is charged, or may charge him with "being feloniously present, aiding, abetting and assisting" the felon to commit the felony (*R.* v. *Gogerly* (1818), Russ. & Ry. 343).

(*r*) *M'Evin's Case* (1858), Bell, C. C. 20. Thus, if a duel takes place and one of the combatants is killed, the surviving combatant is guilty of murder as a principal in the first degree; the seconds are principals in the second degree. Other persons present, if they sustain the combatants either by advice or assistance or go to the ground for the purpose of encouraging and forwarding the conflict, are principals in the second degree (*R.* v. *Young* (1838), 8 C. & P. 644). The combatants at a prize fight with fists are guilty of assault as principals in the first degree, and all other persons who are present and take part in the management of the fight or aid and abet the combatants are principals in the second degree. Mere voluntary presence at a prize fight does not necessarily make a person a principal in the second degree, if he does not encourage or assist the fight, but *semble* the mere presence of a person unexplained at a prize fight affords some evidence of an aiding and abetting in the fight (*R.* v. *Coney* (1882), 8 Q. B. D. 534, C. C. R.). If two persons agree to commit suicide together and one accomplishes his object in the presence of and with the consent of the other, the survivor is guilty as a principal in the second degree of the murder of the one who dies (*R.* v. *Dyson* (1823), Russ. & Ry. 523; *R.* v. *Alison* (1838), 8 C. & P. 418). If the owner or person in control of a vehicle is in it, while it is being driven at an excessive speed, although he does not himself drive it, yet as he could and ought to have prevented it being so driven at an excessive speed, he is liable as a principal in the second degree for the offence of unlawfully driving (*Du Cros* v. *Lambourne*, [1907] 1 K. B. 40).

(*s*) *E.g.*, a boy under the age of fourteen years (see p. 240, *ante*) or a woman may be a principal in the second degree in the crime of rape (*R.* v. *Eldershaw* (1828), 3 C. & P. 396; *R.* v. *Ram* (1893), 17 Cox, C. C. 609). But a girl who is of such an age that unlawful sexual intercourse with her is a crime cannot be convicted of aiding and abetting a person to have such intercourse with her (*R.* v. *Tyrell*, [1894] 1 Q. B. 710, C. C. R.). A woman who consents to the use upon herself of an instrument with intent to procure her miscarriage may be convicted of "being present, aiding and abetting" the person who uses the instrument (*R.* v. *Sockett* (1908), 72 J. P. 428).

(*t*) See *M'Daniel's Case* (1755), 19 State Tr. 745, 801—807, and *R.* v. *Johnson* (1841), Car. & M. 218.

and unless such person is present when it is committed, and has a common criminal purpose with the principal in the first degree (*a*).

A person who has a common criminal purpose with the principal in the first degree is a principal in the second degree, if he is either actually present at the scene of the felony or present so near at hand as to enable him to afford aid to the person who commits the crime (*b*). Presence at or near the scene of the felony.

A person who though privy to the commission of a felony is not, when it is committed, sufficiently near to the scene to afford aid is not a principal in the second degree, but is an accessory before the fact (*c*).

A person who comes up after a felony has been completed and assists the felon is not a principal, but may be an accessory after the fact (*d*).

529. Although a man is present while a felony is being committed, yet if he takes no part in it, and does not act in concert with those who commit it, he is not a principal in the second degree, merely because he does not endeavour to prevent the felony or to apprehend the felon (*e*). Participation.

A person who is present at the commission of a crime knowing

(*a*) *M'Evin's Case* (1858), Bell, C. C. 20.

(*b*) *R.* v. *Soares* (1802), Russ. & Ry. 25; *R.* v. *Gogerly* (1818), Russ. & Ry. 343. Thus, if A. goes into a house and steals goods there, and B., while A. is inside, remains outside for the purpose of assisting A., B. is a principal in the second degree (*R.* v. *Owen* (1825), 1 Mood. C. C. 96; *R.* v. *Gogerly, supra*). So, if C. and D. accompany E. to the door of a shop, knowing that E. intends there to utter a forged document, and E. utters the document in the shop, and C. and D. remain outside in a vehicle for the purpose of taking E. away with the proceeds of the uttering, C. and D. are principals in the second degree, although they could not be seen by the person to whom the document was uttered (*R.* v. *Vanderstein* (1865), 10 Cox, C. C. 177, C. C. R.).

(*c*) *R.* v. *Davis and Hall* (1806), Russ. & Ry. 113; *R.* v. *Kelly* (1820), Russ. & Ry. 421; *R.* v. *Jeffries and Bryant* (1848), 3 Cox, C. C. 85. In misdemeanours such a person would be a principal in the second degree (*R.* v. *Clayton* (1843), 1 Car. & Kir. 128; *R.* v. *Moland* (1843), 2 Mood. C. C. 276). But as to the distinction between principals and accessories before the fact, see p. 248, *ante*.

(*d*) *E.g.*, F. steals goods from the owner's premises and removes them to a place outside; G. is then told of the theft and assists in carrying the goods away to another place; G. is not a principal in the second degree to the theft, but is an accessory after the fact, the asportation being complete before G. did anything; he is also guilty of receiving the goods knowing them to be stolen (*R.* v. *M'Makin and Smith* (1808), Russ. & Ry. 333, n.; *R.* v. *King* (1817), Russ. & Ry. 332). But if F. with felonious intent removes the goods to another part of the owner's premises, although there may have been sufficient asportation of the goods to make F. guilty of larceny (see p. 630, *post*), yet the asportation is not complete for all purposes, and if G. assists in carrying the goods away, while they are still on the owner's premises, he is liable as a principal, the transaction not being complete till the goods are removed from the owner's premises (*R.* v. *Dyer* (1801), 2 East, P. C. 767). H. and J. wound K.; H. then makes off, and after he has got away L. comes up and assaults K.; L. cannot be found guilty on an indictment charging him jointly with H. and J. with wounding K. (*R.* v. *M'Phane* (1841), Car. & M. 212).

(*e*) *R.* v. *Coney* (1882), 8 Q. B. D. 534, C. C. R., *per* CAVE, J., at p. 539; 1 Hale, P. C. 439; Fost. 350. Such a person might be guilty of misprision of felony, but there is no recent instance of a prosecution for such an offence (see p. 503, *post*).

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that it is being committed is not liable as a principal, if he is not present for the purpose of aiding or encouraging (*f*).

Collateral acts.

530. If several persons are present together prepared to pursue a common unlawful object at all hazards, and one of them in furtherance of the common object does a criminal act, then all are responsible for the act, whether it was originally contemplated or not. The person who does the act is a principal in the first degree; the others are principals in the second degree (*g*). If the act is not done in furtherance of the common unlawful object, no one is liable for it except the person who does the act (*h*).

(*f*) Thus, where A. agreed with B. to get C. to commit a robbery so that B. should arrest C., and that A. and B. should divide between them a reward for the apprehension of C., and A. was present when the robbery was committed, it was held that A. was not guilty of the robbery as a principal in the second degree, because although he acted from a bad motive, yet he was not present to aid, but to detect, and did not intend that the felony should be successful (*Dannelly's Case* (1816), Russ. & Ry. 310). In such a case A. and B. are not guilty of the felony, but are guilty of a conspiracy (*M'Daniel's Case* (1755), 19 State Tr. 745, 808).

(*g*) Thus, where A. and B. go out with the common object of robbing C., and A. in pursuit of the common object does an act which causes the death of C. in such circumstances that it is murder in A., it is also murder in B. (*R.* v. *Jackson* (1857), 7 Cox, C. C. 357). So if two or more persons go out together for the purpose of committing a breach of the peace, and in the course of the accomplishment of the common design one of them kills a man, the others are also guilty of manslaughter (*R.* v. *Harrington* (1851), 5 Cox, C. C. 231; see *Cornwallis's* (*Lord*) *Case* (1678), 7 State Tr. 143, 157). Where a number of persons went out all armed with guns for the purpose of poaching, and on being surprised by gamekeepers threatened to shoot the gamekeepers who tried to arrest them, and one only of the poachers fired and wounded a gamekeeper, it was held that all might be found guilty of wounding with intent to murder (*R.* v. *Edmeads* (1828), 3 C. & P. 390). If two persons each drive a vehicle at a furious rate along a public road, and incite each other so to drive, and one of the vehicles runs over a man and kills him, each of the two persons is guilty of manslaughter (*R.* v. *Swindall* (1846), 2 Car. & Kir. 230).

(*h*) Thus, where some of a party of men, who were engaged unlawfully in breaking into a house for the purpose of apprehending suspected persons, stole goods in the house, it was held that those who took no part in the stealing were not liable for that crime, for, although they were engaged in an unlawful act, they knew not of any intent to steal (*Anon.* (1664), 1 Leach, 7, n.). If a gang of poachers attack a gamekeeper and leave him senseless on the ground and go away, and one of them returns and robs him, the others are not guilty of the robbery, as, though there was a common intent to kill game and resist the keeper, there was no common intent to steal (*R.* v. *Hawkins* (1828), 3 C. & P. 392; see *Anon.* (1723), 8 Mod. Rep. 164). A number of persons were engaged by the tenant of a house to assist him in carrying away his household goods to avoid distress for rent, and assembled armed with bludgeons and other weapons; the landlord of the house, accompanied by another party, came to prevent the removal of the goods, and a violent affray ensued. While they were fighting one of the company killed a boy who was standing looking on but totally unconcerned in the fray. It was held that, as the boy was unconcerned in the fray, his having been killed by one of the company could not affect the rest, who, though present, could not be said to be aiding and abetting the death of one who was totally unconcerned in the design for which the parties had assembled (*R.* v. *Hodgson* (1730), 1 Leach, 6; see *R.* v. *Plummer* (1702), 12 Mod. Rep. 627). So where several persons were trespassing in a wood in pursuit of game and only one of them had a gun, and he was walking in front of the others and fired the gun and killed a gamekeeper who came upon the trespassers, it was held that these facts afforded no evidence on which the rest of the party could be found

Accessories before the fact.

531. Persons who procure, counsel, or command another to commit a felony, but are not present when it is committed, are accessories before the fact (*i*).

It is not necessary that there should be any direct communication between an accessory before the fact and the principal felon; it is enough if the accessory direct an intermediate agent to procure another to commit the felony without naming or knowing of the person to be procured (*k*).

A person is not an accessory before the fact, unless there is some sort of active proceeding on his part; he must incite or procure or encourage the criminal act, or assist or enable it to be done, or engage or counsel or command the principal to do it (*l*).

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guilty of murder (*R.* v. *Skeet* (1866), 4 F. & F. 931; see *R.* v. *Edmeads* (1828), 3 C. & P. 390). If A. and B. together commit a felony and upon an alarm run different ways, and A., to avoid being taken, attacks and maims C., who is pursuing him, B. is not liable for the injury to C. (*R.* v. *White* (1806), Russ. & Ry. 99).

(*i*) *R.* v. *Soares* (1802), Russ. & Ry. 25; *R.* v. *Gordon* (1789), 1 Leach, 515. If a person is indicted as an accessory before the fact, the indictment alleges that the accused did "feloniously counsel, procure, and command" or "incite, move, aid, or hire" the felon to commit the felony, but such a person may now be indicted as a principal for committing the felony (see p. 257, *post*). The felony may be either a felony at common law or one created by statute, although the statute uses no words expressly applicable to accessories. A number of statutes contain provisions expressly applicable to accessories, and use various expressions to describe them, *e.g.*, the stat. (1531) 23 Hen. 8, c. 1, speaks of "abetment, procurement, helping, maintaining or counselling"; the stat. (1547) 1 Edw. 6, c. 12, s. 13, of "aiders, abettors, procurers and counsellors"; the stat. (1557) 4 & 5 Phil. & Mar. of those who "command, hire or counsel"; the stats. (1588) 31 Eliz. c. 12, s. 5, and (1623) 21 Jac. 1, c. 6, of "accessories"; the stat. (1597) 39 Eliz. c. 9, s. 2, of "procurers or accessories"; the stat. (1691) 3 & 4 Will. & Mar. c. 9, s. 1, of those who "comfort, aid, abet, assist, counsel, hire or command"; the stat. (1702) 1 Ann. stat. 2, c. 9, of "counsellors and contrivers"; the Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 2, of those who "counsel, procure or command." See also 1 Russell on Crimes, 6th ed., p. 171.

(*k*) *R.* v. *Cooper* (1833), 5 C. & P. 535. Thus, A. bids B. to hire somebody to murder C., and furnishes money for that purpose; D., a person whom A. never saw or heard of, is hired by B. and commits the murder. A. is an accessory before the fact to the act of D. (*M'Daniel's Case* (1755), 19 State Tr., *per* FOSTER, J., at p. 804; see also *Somerset's* (*Earl*) *Case* (1616), 2 State Tr. 966).

(*l*) *R.* v. *Taylor* (1875), L. R. 2 C. C. R. 147. In this case A. and B. quarrelled and agreed to fight with their fists, and to put down £1 each, so that £2 might be paid to the winner; C. consented to hold the £2 and pay it over to the winner. A. and B. fought, and A. received injuries of which he afterwards died. C., who had nothing to do with the fight and was not present at it, being informed who was the winner, but knowing nothing of A.'s danger, paid the £2 to B.; there was no reason to suppose beforehand that the life of either A. or B. would be endangered. It was held that C. was not an accessory to the manslaughter of A.

If A. commits suicide with the assistance of B., who supplies the means by which the act is done, but is absent when the act is done, B. is an accessory before the fact to the murder of A. (*R.* v. *Russell* (1832), 1 Mood. C. C. 356); so if A. supplies B. with a noxious drug with intent to procure a miscarriage and B. takes the drug in A's. absence and dies from its effect, A. is an accessory before the fact to the murder of B. (*R.* v. *Russell*, *supra*). A person who in these circumstances supplies a drug with such an intent "causes the drug to be taken," although he is absent when it is taken (*Wilson's Case* (1856), Dears. & B. 127). But if B. is induced by A. to get her a noxious drug for the purpose of procuring a miscarriage, and gets the

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As regards offences which are sudden and unpremeditated there can be no accessories before the fact (*m*).

Continuing procurement.

532. If a person procures another to commit a felony, the procurement continues, until it is countermanded or the felony is perpetrated (*n*). If the person who procures the felony countermands his consent before the act is done, and the felony is nevertheless committed by the principal with knowledge of the countermand, the procurer is not liable as an accessory, but if the countermand is not communicated until after the act is done, the procurer is liable (*o*).

For what acts accessory is liable.

If a person procures another to commit a felony of one kind, and the principal knowingly and wilfully commits a felony of another kind, the procurer is not liable as an accessory (*p*).

If the principal complies in substance with the instigation of the accessory, but makes some variation in circumstances of time or place or in the manner of execution, the accessory is liable (*q*).

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drug with the full knowledge of the purpose to which it was to be applied, but does not either mediately or immediately administer the drug or cause or intend or wish it to be taken, and A. takes the drug in B.'s absence and dies in consequence, B. is not guilty of murder either as a principal or as an accessory (*R.* v. *Fretwell* (1862), Le. & Ca. 161). In the case of *R.* v. *De Marny*, [1907] 1 K. B. 388, it was held that the editor of a newspaper who inserted in his paper advertisements, not obscene themselves, by which he knowingly assisted in the sale of obscene books and photographs, was guilty of causing and procuring obscene publications to be sold and published.

(*m*) 1 Hale, P. C. 615; *Bibithe's Case* (1597), 4 Co. Rep. 43 b. Where manslaughter ensues upon a sudden debate or affray, and there is no antecedent design to do an unlawful act, it seems that there cannot be an accessory before the fact to the manslaughter (*ibid.*; and see *R.* v. *Taylor* (1875), L. R. 2 C. C. R. 147, *per* MELLOR, J., at p. 148). But if A. aids and abets B. to do an unlawful act, and B. does it, and in the furtherance of the unlawful design causes the death of C. in such circumstances that it is manslaughter in B., it seems that A. in such a case would be an accessory before the fact to the manslaughter (see *Taylor's Case* (1857), Dears. & B. 288, where the prisoner was convicted of manslaughter, although he was absent when the act was done which caused the death).

(*n*) *R.* v. *Parker* (1560), 2 Dyer, 186 a. B. counselled A., who was with child, to murder the child when it should be born; the child was born and was murdered by A. and C. It was held that B. was liable as an accessory before the fact; although the procurement was before the birth, yet it continued afterwards (*ibid.*; and see *R.* v. *Banks* (1873), 12 Cox, C. C. 393).

(*o*) 1 Hale, P. C. 618; 2 Plowd. 476.

(*p*) Fost. 369. Thus, if A. commands B. to burn C.'s house, and B. in so doing commits a robbery, A., though accessory to the burning, is not accessory to the robbery, for "that is a thing of a distinct and unconsequential nature" (1 Hale, P. C. 617; 4 Bl. Com. 37). So if A. counsels B. to steal the goods of C. on the road, and B. breaks into C.'s house and steals them there, A. is accessory to the stealing, but not accessory to the breaking into the house, because it is a felony of another kind (2 Plowd. 475; 1 Hale, P. C. 617). A., wishing to get rid of his wife B., consulted C., who advised him to poison her and supplied poison for that purpose; A., in the absence of C., gave the poison to B., who did not take it but gave it to D., who took it and died; it was held that C. was not an accessory to the murder of D. (*Saunders' Case* (1576), 2 Plowd. 473).

(*q*) Thus if A. advises B. to murder C. by poison and B. kills C. by any other means, or if A. commands or advises B. to murder C. at one place and C. commits the murder at another place, A. will be liable as an accessory, for the murder of C. was the object principally in contemplation (Fost. 369, 370; 2 Hawk. P. C., c. 29, s. 20; Bacon, Maxims, *Regula* 16). If A. counsels B. to steal goods in C.'s house, but not to break into it, and B. does break into the

Where the principal goes beyond the terms of the instigation, yet if the advice or order of the instigator is substantially followed or obeyed, and the felony committed was a probable consequence of what was ordered or advised, the person giving the order or advice is an accessory to that felony (*r*).

Accessories after the fact.

533. A person who, knowing a felony to have been committed by another, receives, relieves, comforts, or aids the felon in any way, either to assist in the disposing of the proceeds of the crime or to hinder his being apprehended or tried or suffering punishment, is an accessory after the fact (*s*).

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house, *semble* A. is accessory to the breaking (Bacon, Maxims, *Regula* 16); but see note (*p*), p. 254, *ante*.

(*r*) Fost. 370; see *Parkes* v. *Prescott* (1869), L. R. 4 Exch. 169, *per* BYLES, J., at p. 182. Thus if A. advise B. to rob C., and in committing the robbery B. kills C., in such circumstances that the killing of C. is in the ordinary course of things the probable consequence of the robbery, A. is accessory to the murder of C.; or if A. advises B. to burn C.'s house, and B. burns the house and the flames take hold of D.'s house and burn it, A. is accessory to the burning of D.'s house (Fost. 370; see 1 Russell on Crimes, 6th ed., 175; and *Parkes* v. *Prescott*, *supra*, *per* BYLES, J., at p. 182). Where A. told B. a scandalous story of C. with the intent that B. should publish it in a newspaper, and B. published the story and added comments of his own, it was held that A. was liable as an accessory for the publication of the whole libel (*R.* v. *Cooper* (1846), 8 Q. B. 533).

(*s*) 1 Hale, P. C. 618; 4 Bl. Com. 37. This applies to statutory felonies as well as to felonies at common law, although the statute creating the felony says nothing of accessories (1 Hale, P. C. 613; but see 1 Hale, P. C. 614; 2 Hawk. P. C., c. 29, s. 14). A person is an accessory after the fact who advises or assists a felon in his escape, or harbours and conceals in his house a felon under pursuit (2 Hawk. P. C., c. 29, s. 26; 1 Hale, P. C. 618, 619; 4 Bl. Com. 38; *R.* v. *Lee* (1834), 6 C. & P. 536). At common law the mere receipt of stolen goods by a person who knew that they were stolen did not of itself make such a person an accessory after the fact to the larceny, but if a person knowing that goods were stolen received them from a thief to keep for him, or to facilitate his escape or to furnish him with supplies, then such person was an accessory after the fact (1 Hale, P. C. 619). But now the receipt of stolen goods by a person who knows that they were stolen is a substantive felony in certain cases (see p. 676, *post*); but there are still some cases in which a person who receives stolen property can only be prosecuted for a common law misdemeanour as an accessory after the fact (*R.* v. *Payne*, [1906] 1 K. B. 97, C. C. R.; and p. 680, *post*). Whoever rescues a felon from an arrest or supplies him with the means of breaking prison and escaping, or, *semble*, opposes the apprehension of a felon, is an accessory after the fact (1 Hale, P. C. 619, 621; 2 Hawk. P. C., c. 29, s. 27); but one who merely suffers the felon to escape is not an accessory (1 Hale, P. C. 619), nor one who relieves or maintains a felon who is bailed or gives medical aid to a felon or assists him in his trial (1 Hale, P. C. 332, 620). A man may be an accessory after the fact by receiving one who was accessory before, as well as by receiving the principal (2 Hawk. P. C., c. 29, s. 1); and a man may be accessory after the fact to a larceny of his own goods or to a robbery on himself by harbouring or concealing the thief or assisting in his escape (Fost. 123). To substantiate a charge of receiving a felon, it must be proved that the party charged did some act to assist the felon personally. Being found in possession of a sum of money derived from the disposal of property stolen by the felon is not enough, if there is nothing to show that the party charged received any of the stolen property or did anything to assist the felon personally (*R.* v. *Chapple* (1840), 9 C. & P. 355). Where A. stole a banknote, and B., knowing of the theft, made an unsuccessful attempt to change the note, and A. went to a shop to purchase some goods in payment for which he tendered the note, B. waiting outside, it was held that this was evidence of B.'s comforting and assisting A., as B. helped A. to get rid of the note and thus evade justice (*R.* v. *Butterfield* (1843), 1 Cox, C. C. 39). But the

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A person who assists a felon is not an accessory after the fact, unless such person had notice, either express or implied, of the felony having been committed (*a*).

Unless the felony is complete at the time when the assistance is given, the person who gives the assistance is not an accessory after the fact to the completed felony (*b*).

A wife cannot be an accessory after the fact to a felony committed by her husband, as she is not bound to discover the crime of her husband (*c*). But a husband may be an accessory to his wife's felony by assisting her (*d*).

Treason.

534. A person who receives or assists a traitor with knowledge that he is a traitor is a principal and not an accessory (*e*).

Indictment etc. of principals in second degree.

535. A principal in the second degree or an accessory before the fact is generally liable to the same punishment as a principal in the first degree (*f*).

A principal in the second degree may be convicted, although the

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assistance which makes a person an accessory after the fact must tend to prevent the principal felon from being brought to justice (*R.* v. *Lee* (1834), 6 C. & P. 536). If A. commits the offence of sending a letter to B. demanding money with menaces, and C. after the letter has been sent assists A. in the attempt to obtain money from B., *semble* C. is not an accessory to the felony of sending the letter; the felony was complete when the letter was sent, and C., by assisting in the attempt to obtain money, does not aid A. in concealing, or even in carrying out the felony which had been completed (*R.* v. *Hansill* (1849), 3 Cox, C. C. 597). If a person employs an intermediate agent to receive and assist a felon, the receipt is the act of the employer and makes him an accessory after the fact, even if he does not see the felon (*R.* v. *Jarvis* (1837), 2 Mood. & R. 40).

(*a*) 2 Hawk. P. C., c. 29, s. 32.

(*b*) Thus, if A. wounds B. mortally, and after the wound given, but before B.'s death, C., with knowledge of the wounding, assists A., C. is not an accessory after the fact to the homicide (2 Hawk. P. C., c. 29, s. 35; 4 Bl. Com. 38); but *semble* he might be an accessory to the felony of maliciously wounding with intent to murder or to do grievous bodily harm (1 Russell on Crimes, 6th ed., 179).

(*c*) 2 Hawk. P. C., c. 29, s. 34; 1 Hale, P. C. 47, 621.

(*d*) 1 Hale, P. C. 621.

(*e*) Fost. 345; *R.* v. *Tracy* (1703), 6 Mod. Rep. 30. But such a person is of the nature of an accessory, and the indictment against him alleges the receipt of the traitor as the overt act, and formerly the receiver could not be found guilty until the principal traitor had been convicted (Fost. 345). The conviction of Lady Alice Lisle for receiving a traitor was reversed by Act of Parliament on the ground that at the time of her conviction the principal traitor had not been convicted (see *Lisle's (Lady Alice) Case* (1685), 11 State Tr. 298, at p. 381); and *quære* whether anyone could even now be found guilty of treason for assisting or receiving a traitor, unless the principal traitor has been convicted, for the Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 3 (see p. 257, *post*), only applies to an accessory to a felony, and, although the word "felony" sometimes includes treason (see 4 Bl. Com. 91), it does not seem to do so in this Act, for there are no accessories in treason.

(*f*) *R.* v. *Gogerly* (1818), Russ. & Ry. 343, C. C. R.; and see Unlawful Oaths Act, 1797 (37 Geo. 3, c. 123), s. 3; Unlawful Oaths Act, 1812 (52 Geo. 3, c. 104), s. 4; Piracy Act, 1837 (7 Will. 4 & 1 Vict. c. 88), s. 4; Treason Felony Act, 1848 (11 & 12 Vict. c. 12), s. 8; Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 98; Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 56; Forgery Act, 1861

principal in the first degree is not joined in the indictment or has not been convicted (*g*).

Neither a principal in the second degree nor an accessory can be convicted of felony, unless it is proved that a principal felony has been committed (*h*).

Indictment etc. of accessory before the fact.

536. An accessory before the fact to a felony may be indicted, tried, convicted and punished in all respects as if he were a principal felon (*i*).

Every accessory before the fact to a felony is guilty of a felony. He may be indicted and convicted as an accessory before the fact to the principal felony, together with the principal felon or after the conviction of the principal felon; or he may be indicted and convicted of a substantive felony, whether the principal felon has or has not been previously convicted or is or is not amenable to justice (*j*).

The punishment of an accessory before the fact is the same,

(24 & 25 Vict. c. 98), s. 49; Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 35; Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 67.

(*g*) *R.* v. *Wallis* (1703), 1 Salk. 334; *R.* v. *Taylor* (1785), 1 Leach, 360; *R.* v. *Towle* (1816), Russ. & Ry. 314.

(*h*) *M'Daniel's Case* (1755), 19 State Tr. 745, 801; *R.* v. *Johnson* (1841), Car. & M. 218; *R.* v. *Turner* (1832), 1 Mood. C. C. 347, C. C. R.; *R.* v. *Gregory* (1867), L. R. 1 C. C. R. 77. A person who incites another to commit a felony, when no felony is committed, is guilty of a misdemeanour (see *infra*).

(*i*) Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 1; see also s. 5. This Act applies to accessories before the fact to any felony, whether it be a felony at common law or by virtue of any Act "passed or to be passed." S. 1 of the Act of 1861 is a re-enactment of s. 1 of the Criminal Procedure Act, 1848 (11 & 12 Vict. c. 46), and applies to murder as well as to other felonies (*R.* v. *Chadwick* (1850), Greaves' Criminal Laws Consolidation Acts, 2nd ed., p. 20). An accessory before the fact may now be indicted for and convicted of the principal felony (*R.* v. *Hughes* (1860), Bell, C. C. 242; *R.* v. *Chadwick, supra; R.* v. *James* (1890), 24 Q. B. D. 439, C. C. R.), although the principal has been acquitted (*R.* v. *Hughes, supra*).

(*j*) Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 2. This section applies both to a felony at common law and to any statutory felony (*ibid.*), but only where a person procures or incites another to commit a felony and a felony is actually committed. If a person incites another to commit a felony and no felony is committed, the offence is a misdemeanour and not a felony (*R.* v. *Gregory* (1867), L. R. 1 C. C. R. 77). The section makes being an accessory before the fact to a felony a substantive felony. The effect of the section is that an accessory before the fact may be indicted as such either along with the principal felon or after the principal felon has been convicted, or he may be indicted alone, although the person charged as the principal felon has not been convicted or is not amenable to justice (see *R.* v. *Wallace* (1841), 2 Mood. C. C. 200, decided upon the corresponding provision of the Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 9); *R.* v. *Ashmall* (1840), 9 C. & P. 236, is inconsistent with *R.* v. *Wallace, supra*, and, it seems, is not law. But if a person is indicted as an accessory before the fact and it turns out that he was in fact a principal, he should, it seems, be acquitted (*R.* v. *Brown* (1878), 14 Cox, C. C. 144; and see *R.* v. *Gordon* (1789), 1 Leach, 515. The better course in all cases of accessories before the fact to a felony is, it seems, to indict them as principals (see *R.* v. *James* (1890), 24 Q. B. D. 439, C. C. R.). If A. is indicted as the principal felon and B. as an accessory before the fact, and A. is found guilty of a misdemeanour and B. of aiding and abetting him, this amounts to a verdict that B. and C. are principals, as there are no accessories in misdemeanours (*R.* v. *Hapgood* (1870), L. R. 1 C. C. R. 221; *R.* v. *Waudby*, [1895] 2 Q. B. 482, C. C. R.). See further, as to the trial of accessories, Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), ss. 6, 7, 9.

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whether he is convicted of a substantive felony or is convicted as an accessory (*k*).

Indictment etc. of accessory after the fact.

537. An accessory after the fact to a felony is guilty of felony (*l*); he may be indicted and convicted either as an accessory after the fact to the principal felony together with the principal felon, or after the conviction of the principal felon; or he may be indicted and convicted of a substantive felony, whether the principal felon has or has not been previously convicted, or is or is not amenable to justice (*m*).

An accessory after the fact to murder is liable to be kept in penal servitude for life, or for any term not less than three years, or to be imprisoned for any term not exceeding two years with or without hard labour (*n*).

An accessory after the fact to any other felony, except where there is some other punishment specially provided, is liable to be imprisoned for any term not exceeding two years with or without hard labour (*o*).

Accomplices in misdemeanour.

538. Any person who aids, abets, counsels, or procures the commission of any misdemeanour is to be tried, indicted, and punished as a principal offender (*p*).

SUB-SECT. 3.—*Attempt to commit a Crime.*

Attempt to commit a crime.

539. Every attempt to commit a felony or a misdemeanour, whether such felony or misdemeanour is created by statute or is an offence at common law, is itself a crime (*q*).

(*k*) See note (*j*), p. 257, *ante*.

(*l*) Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 3.

(*m*) *Ibid.* This section applies both to any felony at common law and to any statutory felony (*ibid.*). The substantive felony of which an accessory after the fact can be convicted is that of being an accessory after the fact. A person who is indicted as a principal to a felony cannot be found guilty of being an accessory after the fact to the felony; the indictment must charge him with being an accessory after the fact (*R.* v. *Fallon* (1862), Le. & Ca. 217). If a person is indicted as a principal for murder and others are indicted as accessories after the fact, and the principal is found guilty of manslaughter, the accessories may also be found guilty and convicted of manslaughter (*R.* v. *Richards* (1877), 2 Q. B. D. 311, C. C. R.).

(*n*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 67.

(*o*) Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 4. Imprisonment with or without hard labour for a period not exceeding two years is also the punishment fixed for accessories after the fact in offences under the Piracy Act, 1837 (7 Will. 4 & 1 Vict. c. 88), s. 4; Treason Felony Act, 1848 (11 & 12 Vict. c. 12), s. 8; Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 98; Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 56; Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 49; Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 35; Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 67 (except in cases of murder, see *supra*).

(*p*) Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 8; and see Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 5. This is only a declaration of the common law (*Benford* v. *Sims*, [1898] 2 Q. B. 641; *Du Cros* v. *Lambourne*, [1907] 1 K. B. 40; *R.* v. *De Marny*, [1907] 1 K. B. 388, C. C. R.). *Semble*, s. 8 of the Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), only applies where the misdemeanour which is counselled etc. is actually committed (*R.* v. *Gregory* (1867), L. R. 1 C. C. R. 77).

(*q*) *R.* v. *Scofield* (1784), Cald. Mag. Cas. at p. 402; *R.* v. *Roderick* (1837), 7 C. & P. 795; *R.* v. *Martin* (1840), 9 C. & P. 215; *R.* v. *Chapman* (1849), 1 Den.

Any overt act immediately connected with the commission of an offence, and forming part of a series of acts which if not interrupted or frustrated would, if the offence could be committed, end in the commission of the actual offence, is, if done with a guilty intent, an attempt to commit the offence (*r*), whether the offence which is attempted is one that could or could not have been committed (*s*).

Merely to make preparations for the commission of an offence is not to attempt to commit the offence. An act, in order to be a criminal attempt, must be immediately, and not remotely, connected with and directly tending to the commission of an offence (*t*).

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432. The attempt is a misdemeanour at common law, unless it has been made a statutory felony or a statutory misdemeanour. The following are statutory felonies: To administer poison etc. with intent to commit murder, Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 14, 15 (see p. 593, *post*); to shoot at any person or attempt to discharge loaded arms with intent to maim etc., *ibid.*, s. 8 (see p. 600, *post*); to attempt to choke etc. with intent to commit an indictable offence (see p. 602, *post*); to attempt to set fire to a building etc. in such circumstances that it would be felony if the building etc. were set fire to, Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 8, 18, 26, 27, 44 (see p. 773, *post*). The following are statutory misdemeanours: To attempt to conceal the birth of a child, Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 60 (see p. 598, *post*); to attempt to commit an unnatural offence, *ibid.*, s. 62 (see p. 539, *post*); to attempt to have unlawful carnal knowledge of a girl under sixteen, Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), ss. 4, 5 (1) (see p. 615, *post*); to attempt to injure post office letter-boxes, Post Office Act, 1908 (8 Edw. 7, c. 48), s. 61. An attempt to commit suicide is a misdemeanour at common law; it is not an attempt to commit murder within the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 15 (*R.* v. *Doody* (1854), 6 Cox, C. C. 463). On any indictment charging a person with committing an offence the jury may find the defendant guilty of an attempt to commit that offence (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 9; and see *McPherson's Case* (1857), Dears. & B. 197). As to the punishment of a common law misdemeanour, see p. 410, *post*.

(*r*) *R.* v. *Eagleton* (1855), Dears. C. C. 515; *R.* v. *Taylor* (1859), 1 F. & F. 511; *R.* v. *Cheeseman* (1862), Le. & Ca. 140; *R.* v. *Linneker*, [1906] 2 K. B. 99, C. C. R.

(*s*) Thus, if a person tries to pick someone's pocket, he is guilty of an attempt to steal, though there is nothing in the pocket (*R.* v. *Ring* (1892), 61 L. J. (M. C.) 116, C. C. R., overruling *R.* v. *Collins* (1864), Le. & Ca. 471; see *R.* v. *Brown* (1889), 24 Q. B. D. 357, C. C. R.; *R.* v. *Williams*, [1893] 1 Q. B. 320, C. C. R.). If a woman, believing that she is with child and that she is taking a noxious thing, does, with intent to procure abortion, take a thing which is in fact harmless, she is guilty of an attempt to procure abortion (*R.* v. *Brown* (1899), 63 J. P. 790).

(*t*) Thus, it is not an attempt to commit an offence to procure the means to commit the offence, when such procuring is a neutral act and may be of an innocent nature, *e.g.*, to buy matches for the sake of setting fire to a house is not an attempt to burn the house, but to light a match for the purpose of setting fire to a house might be a criminal attempt (*R.* v. *Taylor* (1859), 1 F. & F. 511). For a person to have in his possession the means of committing a crime, even though he has the intent to commit it, is not of itself an offence at common law; thus, it is not an offence at common law to have possession of obscene prints with intent to sell them, or of counterfeit coin with intent to utter it, or of coining instruments for the purpose of coining (*R.* v. *Heath* (1810), Russ. & Ry. 184; *R.* v. *Stewart* (1814), Russ. & Ry. 288 (disapproving of *R.* v. *Sutton* (1736), Lee *temp.* Hard. 370); *Dugdale* v. *R.* (1853), Dears. C. C. 64). To have possession of counterfeit coin or of coining instruments is in certain cases a statutory offence (see p. 516, *post*). As to keeping obscene publications for purpose of sale, see now Obscene Publications Act, 1857 (20 & 21

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Incitement to crime.

540. It is a crime for one person to incite or solicit or provoke another to commit a crime, although no crime is actually committed; such an incitement or soliciting or provoking is a form of attempting to commit a crime (*a*).

SUB-SECT. 4.—*Conspiracy.*

Conspiracy.

541. If two or more persons agree together to do something contrary to law, or wrongful and harmful towards another person, or to use unlawful means in the carrying out of an object not otherwise unlawful, the persons who so agree commit the crime of conspiracy (*b*). So long as the design to do such

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Vict. c. 83), s. 1. But it is an offence at common law to obtain and procure obscene prints with intent to sell them, or base coin with intent to utter it, or coining instruments with intent to make counterfeit coin (*Dugdale* v. *R.* (1853), Dears. C. C. 64; *Fuller's Case* (1816), Russ. & Ry. 308; *R.* v. *Roberts* (1855), Dears. C. C. 539); and, *semble*, to have possession of such things may be evidence of procuring them (*Fuller's Case, supra*). To deliver poison to an agent with directions to him to cause it to be administered in such circumstances that, if it were administered, the agent would have been the sole principal felon, is an attempt to cause poison to be administered, which, if done with a guilty intent, is made criminal by the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 14. As to attempts to discharge loaded firearms, see *R.* v. *St. George* (1840), 9 C. & P. 483; *R.* v. *Lewis* (1840), 9 C. & P. 523; *R.* v. *Brown* (1883), 10 Q. B. D. 381, C. C. R.; *R.* v. *Duckworth*, [1892] 2 Q. B. 83, C. C. R.; *R.* v. *Linneker*, [1906] 2 K. B. 99, C. C. R., and p. 600, *post*.

(*a*) *R.* v. *Higgins* (1801), 2 East, 5; *R.* v. *Quail* (1866), 4 F. & F. 1076; *R.* v. *Ransford* (1874), 13 Cox, C. C. 9, C. C. R.; *R.* v. *De Kromme* (1892), 17 Cox, C. C. 492, C. C. R.; and see *Hicks' Case* (1618), Hob. 215; *R.* v. *Johnson* (1678), 2 Show. 1; *R.* v. *Scofield* (1784), Cald. Mag. Cas. 397, 400; *R.* v. *Darby* (1702), 7 Mod. Rep. 101; *R.* v. *Vaughan* (1769), 4 Burr. 2494. If a felony is actually committed, the person who incites is guilty of a felony as an accessory (see p. 253, *ante*). If a misdemeanour is committed, the person who incites is guilty of the misdemeanour as a principal. To incite to commit a felony, when no felony is committed, is generally a common law misdemeanour (*R.* v. *Gregory* (1867), L. R. 1 C. C. R. 77). Incitement to mutiny is a statutory felony (Incitement to Mutiny Act, 1797 (37 Geo. 3, c. 70), s. 1; see p. 464, *post*). The following are statutory misdemeanours: To incite to murder (Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 4; see p. 595, *post*); to incite to commit a crime punishable under the Post Office Act, 1908 (8 Edw. 7, c. 48) (see s. 69); to incite to commit an offence under the Official Secrets Act, 1889 (52 & 53 Vict. c. 52) (see s. 3). To constitute the offence of inciting or soliciting there must be a communication which reaches some person whom the offender wishes to incite or solicit (*R.* v. *Krause* (1902), 66 J. P. 121). It is not necessary that the mind of the person whom it is sought to reach should be in any way influenced (*ibid.*); but if a communication is sent with a view to solicit or incite, and does not reach the person for whom it is intended, the person sending it is guilty of the misdemeanour of attempting to solicit or incite (*R.* v. *Ransford* (1874), 13 Cox, C. C. 9; *R.* v. *Banks* (1873), 12 Cox, C. C. 393; *R.* v. *Krause, supra*). The offence of inciting or soliciting to commit a crime may be committed by publishing the incitement or solicitation in a newspaper addressed to the public in general (*R.* v. *Most* (1881), 7 Q. B. D. 244, C. C. R.; *R.* v. *Brown* (1899), 63 J. P. 790). If the person who incites believes that a crime can be accomplished by certain means, he commits the crime of inciting, although the commission of the crime in the manner proposed is impossible (*R.* v. *Brown, supra*). A girl who is of such an age that unlawful carnal knowledge of her is a crime (see p. 615, *post*) does not commit any criminal offence in inciting a male person to have unlawful carnal knowledge of her (*R.* v. *Tyrrell*, [1894] 1 Q. B. 710, C. C. R.).

(*b*) *Quinn* v. *Leathem*, [1901] A. C. 495, *per* Lord BRAMPTON, at p. 528;

an act rests in intention only it is not criminal, but as soon as two or more agree to carry it into effect, then their act becomes punishable (*c*).

The gist of the offence lies in the bare engagement and association to do an unlawful thing (*i.e.*, a thing contrary to or forbidden by law), whether such thing be criminal or not (*d*), and whether any act other than the engagement or association be done by the conspirators or not (*e*).

An act which would not be criminal if done by one person may

O'Connell v. *R.* (1844), 11 Cl. & Fin. 155, H. L., *per* TINDAL, C.J., at p. 233; *R.* v. *Aspinall* (1876), 2 Q. B. D. 48, C. A., *per* BRETT, J., at p. 58; *Mulcahy* v. *R.* (1868), L. R. 3 H. L. 306, *per* WILLES, J., at p. 317; *R.* v. *Parnell* (1881), 14 Cox, C. C. 508 (see stat. 33 Edw. 1 (*Ordinacio de Conspiratoribus*)). An agreement which is immoral or against public policy or in restraint of trade, or otherwise of such a character that the courts will not enforce it, is not necessarily a conspiracy. An agreement, to be a conspiracy, must be to do that which is contrary to or forbidden by law, as to violate a legal right or make use of unlawful methods, such as fraud or violence, or to do what is criminal (see *Mogul Steamship Co.* v. *McGregor, Gow & Co.*, [1892] A. C. 25, *per* Lord HALSBURY, at p. 39; and see *per* Lord BRAMWELL, at p. 46; *R.* v. *Aspinall*, *supra*, *per* BRETT, J., at p. 59; compare *R.* v. *Seward* (1834), 1 Ad. & El. 706). It was said by Lord ELLENBOROUGH, C.J., in pronouncing the judgment of the Court of King's Bench in *R.* v. *Turner* (1811), 13 East, 228, at p. 231, that a conspiracy to commit a mere civil trespass, *e.g.*, to go and sport upon another person's ground, is not an indictable offence. The decision in *R.* v. *Turner* was disapproved of in *R.* v. *Rowlands* (1851), 17 Q. B. 671, *per* Lord CAMPBELL, C.J., at p. 686, on the ground that the facts in *R.* v. *Turner* amounted to a conspiracy to commit an indictable offence, but in *R.* v. *Rowlands*, *supra*, no opinion was expressed on the *dictum* of Lord ELLENBOROUGH. If a conspiracy causes damage to the person against whom it is directed, such person has a civil remedy by action (see *Savile* v. *Roberts* (1698), 1 Ld. Raym. 374, and *Mogul Steamship Co.* v. *McGregor, Gow & Co.*, *supra*, at p. 46). After the passing of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86) (see s. 3), the law was different in regard to actions and prosecutions with respect to trade combinations; and an action for conspiracy might be brought where an indictment could not be brought (*Quinn* v. *Leathem*, [1901] A. C. 495); but this is no longer so (see Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 1).

(*c*) *Mulcahy* v. *R.*, *supra*. The overt act in such a case consists of the agreement of the conspirators, which is an act in advancement of the intention which each of them has conceived in his mind (*Mulcahy* v. *R.*, *supra*, at p. 328). A conspiracy to commit treason is therefore an overt act sufficient to support an indictment for treason (*Mulcahy* v. *R.*, *supra*).

(*d*) *Savile* v. *Roberts* (1698), 1 Ld. Raym. 374; *R.* v. *Spragg* (1760), 2 Burr. 993; *Leith* v. *Pope* (1780), 2 Wm. Bl. 1327, at p. 1329; *Mogul Steamship Co.* v. *McGregor, Gow & Co.* (1889), 23 Q. B. D. 598, C. A., *per* BOWEN, L.J., at p. 616, "Certain kinds of conduct not criminal in one individual may become criminal if done by combination among several"; see also *R.* v. *Warburton* (1870), L. R. 1 C. C. R. 274, *per* COCKBURN, C.J., at p. 276; *R.* v. *Orman* (1880), 14 Cox, C. C. 381; *Mogul Steamship Co.* v. *McGregor, Gow & Co.*, [1892] A. C. 25, *per* Lord HALSBURY, L.C., at p. 38, and *per* Lord BRAMWELL, at p. 45. But in all such cases there must exist either an ultimate object of malice, or wrong, or wrongful means of execution involving elements of injury to the public or negativing the pursuit of a lawful object (*Mogul Steamship Co.* v. *McGregor, Gow & Co.*, *supra*, *per* Lord FIELD, at p. 52). No agreement or combination by two or more persons to do or procure to be done any act in contemplation and furtherance of a trade dispute between employers and workmen is indictable as a conspiracy, if such act committed by one person would not be punishable as a crime (Conspiracy and Protection of Property Act, 1875 (39 & 40 Vict. c. 86), s. 3; and see Trade Disputes Act, 1906 (6 Edw. 7, c. 47), ss. 1, 5, and title TRADE AND TRADE UNIONS). See p. 563, *post*.

(*e*) *O'Connell* v. *R.* (1844), 11 Cl. & Fin. 155, H. L.

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be criminal if done by two or more in combination. But there is no conspiracy unless either the object of the combination is unlawful in the sense of being contrary to or forbidden by law, or illegal methods are resorted to in carrying it out (*f*).

Different kinds of conspiracy:—

To commit a crime.

A conspiracy to commit a crime is criminal, whether the crime is or is not committed (*g*), and whether the crime is punishable on indictment or on summary conviction (*h*).

A person may be guilty of conspiracy with others to commit a crime, although he himself could not be found guilty of the crime which he has conspired to commit (*i*).

To obstruct etc. the course of justice.

542. A conspiracy to prevent, obstruct, pervert, or defeat the course of public justice is criminal (*k*). So is a conspiracy to raise discontent and disaffection among the subjects of the King; or to stir up jealousies, hatred, and ill-will between different classes of the King's subjects; or to promote amongst the King's subjects in one part of the United Kingdom feelings of ill-will and hostility

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(*f*) *Mogul Steamship Co.* v. *McGregor, Gow & Co.*, [1892] A. C. 25, *per* Lord WATSON, at p. 41.

(*g*) See *R.* v. *O'Donnell* (1848), 7 State Tr. (N. S.) 638; *R.* v. *Deasy* (1883), 15 Cox, C. C. 334 (conspiracy to commit treason); *R.* v. *O'Connell* (1844), 5 State Tr. (N. S.) 2 (conspiracy to make seditious speeches and issue seditious publications); *R.* v. *Holberry* (1840), 4 State Tr. (N. S.) 1347 (conspiracy to create a breach of the peace); *R.* v. *Cooper* (1843), 4 State Tr. (N. S.) 1249 (conspiracy to cause riots); *R.* v. *Forbes* (1823), 2 State Tr. (N. S.) 939 (conspiracy to assemble riotously); *R.* v. *Serjeant* (1826), Ry. & M. 352 (conspiracy to procure the swearing of a false oath); *R.* v. *O'Connell* (1831), 2 State Tr. (N. S.) 629 (conspiracy to hold a meeting prohibited by a proclamation made under an Act of Parliament); *R.* v. *Wakefield* (1827), 2 Lew. C. C. 1 (conspiracy to abduct a female); *R.* v. *Grey* (*Lord*) (1682), 9 State Tr. 127; *R.* v. *Duguid* (1906), 75 L. J. (K. B.) 470, C. C. R. (conspiracy to remove a girl under age from the custody of a person who has lawful charge of her); and see *Wade* v. *Broughton* (1814), 3 Ves. & B. 172; *R.* v. *Whitchurch* (1890), 24 Q. B. D. 420, C. C. R. (conspiracy to administer drugs to a woman with intent to procure abortion). A conspiracy to commit treason may be charged as a substantive offence, or may be laid as an overt act (*R.* v. *O'Donnell* (1848), 7 State Tr. (N. S.) 638; *Mulcahy* v. *R.* (1868), L. R. 3 H. L. 306; *R.* v. *Davitt* (1870), 11 Cox, C. C. 676). Some conspiracies have been made express statutory offences, *e.g.*, a conspiracy to commit murder is a statutory misdemeanour (Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 4; see p. 595, *post*); a conspiracy to cause an explosion of a nature likely to endanger life is a statutory felony (Explosive Substances Act, 1883 (46 Vict. c. 3), s. 3). As to a conspiracy to pervert and obstruct the due course of justice, see p. 500, *post*.

(*h*) *R.* v. *Pollman* (1809), 2 Camp. 229; *R.* v. *Whitchurch* (1890), 24 Q. B. D. 420, C. C. R.

(*i*) Thus, a woman who, believing herself to be but not actually being with child, conspires with others to administer drugs to herself or to use instruments on herself with intent to procure abortion, may be convicted of a conspiracy to procure abortion, although the woman by herself could not be guilty of procuring abortion, as she was not with child and did not come within the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 58 (*R.* v. *Whitchurch* (1890), 24 Q. B. D. 420, C. C. R.). So, although the mother of a child may not be prosecuted under the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 56, for taking her child out of the possession of a person having the lawful charge of the child, yet she may be indicted for conspiracy with someone else to take the child out of the possession of such person (*R.* v. *Duguid* (1906), 75 L. J. (K. B.) 470, C. C. R.; *R.* v. *Crossman, Ex parte Chetwynd* (1908), 98 L. T. 760; see also *R.* v. *Wakefield* (1827), 2 Lew. C. C. 1; *R.* v. *Kohn* (1864), 4 F. & F. 68).

(*k*) See p. 500, *post*.

towards the King's subjects in another part of the United Kingdom; or to diminish the confidence of the King's subjects of any part of his dominions in the general administration of the law in that part; or to bring into hatred and disrespect the tribunals established in any part of the King's dominions for the administration of justice (*l*).

To do an act contrary to public morals etc.

543. The gist of the offence of criminal conspiracy may consist in the agreement to do an act contrary to public morals or decency, although such act may not of itself be criminal if done by only one person (*m*).

To cheat.

A conspiracy to cheat and defraud is criminal, even though the act which it is agreed to do is not criminal if done by one person (*n*).

To injure.

A combination to injure a person without just cause or excuse is a criminal conspiracy (*o*).

(*l*) *O'Connell* v. *R.* (1844), 11 Cl. & Fin. 155, H. L., *per* TINDAL, C.J., at p. 234. See *R.* v. *Vincent* (1839), 9 C. & P. 91. In *Vertue* v. *Clive* (*Lord*) (1769), 4 Burr. 2472, it was held that a conspiracy among the officers in the army of the East India Company to resign their commissions together was criminal. It is criminal for two or more persons to combine to obtain money as a reward for procuring from the Government the appointment of a person to a post in the public service (*R.* v. *Pollman* (1809), 2 Camp. 229). But an indictment will not lie against members of either House of Parliament for a conspiracy to make false statements in the House of which they are members; such statements are on the same footing as speeches delivered in Parliament by members, which cannot be the foundation of any legal proceedings out of Parliament (*Ex parte Wason* (1869), L. R. 4 Q. B. 573).

(*m*) *E.g.*, to conspire to prevent the burial of a body (*R.* v. *Young* (1784), 4 Wentworth's Pleadings, 219, cited in *R.* v. *Lynn* (1788), 2 Term Rep. 734); to bring about a marriage by the use of violence, threats, contrivance or some sinister means (*R.* v. *Seward* (1834), 1 Ad. & El. 706); to procure a woman to become a prostitute (*R.* v. *Howell* (1864), 4 F. & F. 160); to procure a woman to have illicit connection with a man (*R.* v. *Delaval* (1763), 3 Burr. 1434; *R.* v. *Grey* (*Lord*) (1682), 9 State Tr. 127; *R.* v. *Mears* (1851), 2 Den. 79). As to the last two kinds of conspiracy see now Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), ss. 2, 3.

(*n*) *R.* v. *Warburton* (1870), L. R. 1 C. C. R. 274, at p. 276; *R.* v. *Aspinall* (1876), 2 Q. B. D. 48, C. A., at p. 59. As to conspiracy to defraud, see p. 708, *post*.

(*o*) *R.* v. *Parnell* (1881), 14 Cox, C. C. 508, at p. 513. See *Quinn* v. *Leathem*, [1901] A. C. 495, at p. 510; *Sweeney* v. *Coote*, [1907] A. C., *per* Lord LOREBURN, L.C., at p. 222. A combination by persons engaged in trade to protect and extend their trade and increase their profits is not a conspiracy, if no unlawful means are employed, although it may result in injury to other persons (*Mogul Steamship Co.* v. *McGregor, Gow & Co.*, [1892] A. C. 25). But a combination by two or more persons without justification or excuse to injure a man in his trade by inducing his customers or servants to break their contracts with him or not to deal with him or continue in his employment, or a combination of two or more persons without justification to injure a workman by inducing employers not to employ him or not to continue to employ him, is a conspiracy and is punishable (*Quinn* v. *Leathem*, [1901] A. C. 495; *Giblan* v. *National Amalgamated Labourers' Union of Great Britain and Ireland*, [1903] 2 K. B. 600, C. A.; *Read* v. *Friendly Society of Operative Stonemasons*, [1902] 2 K. B. 732, C. A.; *South Wales Miners' Federation* v. *Glamorgan Coal Co.*, [1905] A. C. 239). As to the meaning of just "cause and excuse," and as to the difference between a legitimate combination which injures another and a criminal combination to injure another, see *Mogul Steamship Co.* v. *McGregor, Gow & Co.* (1889), 23 Q. B. D. 598, C. A., *per* BOWEN, L.J., at p. 616. As to trade combinations many of the cases before the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), are no longer authorities (*Gibson* v. *Lawson*, [1891] 2 Q. B. 545, *per* Lord COLERIDGE, C.J., at p. 560; and see, too, Trade Disputes Act, 1906 (6 Edw. 7, c. 47), ss. 1, 2, 3). A malicious

SECT. 3. **Degrees of Criminal Liability.**

Husband and wife.

544. Husband and wife cannot alone commit the crime of conspiracy, as they are deemed but one person in law, but they may commit the crime of conspiring with others (*p*).

Trial of conspirators.

545. As the crime of conspiracy involves the agreement of two persons, if two persons are tried together for conspiring with one another, and there is no charge of conspiring with anyone else, they must be both acquitted or both convicted (*q*).

SUB-SECT. 5.—*Misprision.*

Misprision of treason or felony.

546. If a person knows of a treason or felony that is being planned or committed, or has been committed, and without consenting to it conceals his knowledge and converts it into a source of emolument to himself, he is guilty of misprision of treason or of felony, as the case may be (*r*).

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combination against a trader to ruin him in his trade is indictable (*R.* v. *Sterling* (1664), 1 Lev. 125; *R.* v. *Cope* (1719), 1 Stra. 144; *R.* v. *Eccles* (1783), 1 Leach, 274, but see *Mogul Steamship Co.* v. *McGregor, Gow & Co.* (1889), 23 Q. B. D. 598, C. A., *per* FRY, L.J., at p. 632; and as to conspiracies affecting trade, see p. 562, *post*). A combination to hiss an actor or to damn a play is indictable (*Anon.* (1768), 1 Russell on Crimes, 6th ed., 496; *Clifford* v. *Brandon* (1810), 2 Camp. 358, *per* MANSFIELD, C.J., at pp. 369 and 372; *Gregory* v. *Brunswick* (*Duke*) (1844), 6 Man. & G. 205, 217, 953, 961; 6 Wentworth's Pleadings 443). It is criminal to conspire to charge a man falsely with being the father of a bastard child (*R.* v. *Best* (1705), 2 Ld. Raym. 1167; *R.* v. *Kimberty* (1662), 1 Lev. 62; S. C. *sub nom. R.* v. *Timberley* (1663), 1 Keb. 254; *R.* v. *Armstrong* (1677), 1 Vent. 304), or to injure a man by bringing any false charge against him, whether such charge is of a criminal offence or not (*R.* v. *Rispal* (1762), 3 Burr. 1320; *R.* v. *Spragg* (1760), 2 Burr. 993); but it is lawful to form associations to prosecute felons and even to put laws in force against political offenders (*R.* v. *Murray* (1823), Matthews, Digest of Criminal Law, *per* ABBOTT, C.J., at p. 90). It is criminal to conspire to prefer an indictment for the purpose of extorting money, whether the charge be true or false (*A.-G.* v. *Blood* (1680), T. Raym. 417; *R.* v. *Kinnersley* (1719), 1 Stra. 193; *R.* v. *Hollingberry* (1825), 4 B. & C. 329; *R.* v. *Jacobs* (1845), 1 Cox, C. C. 173). The falsity of the charge is only material as showing the *bona* or *mala fides* of the prosecution (*Pippet* v. *Hearn* (1822), 5 B. & Ald. 634). It is criminal to conspire, with intent to injure a minor and defraud him of his property, to bring about a marriage between him and a common prostitute by means of a false oath and false pretences (*R.* v. *Serjeant* (1826), Ry. & M. 352). It is a criminal conspiracy for a man and woman to marry in the name of another person for the purpose of raising a specious title to the estate of the person whose name is assumed (*R.* v. *Robinson* (1746), 1 Leach, 37). *Semble*, a combination to insult and annoy a person is indictable (see *Mogul Steamship Co.* v. *McGregor, Gow & Co.*, [1892] A. C. 25, *per* Lord HALSBURY, L.C., at p. 38). According to a *dictum* of Lord ELLENBOROUGH, an indictment will not lie for a conspiracy to deprive a man of an office in a trading company which is illegal because not incorporated as the law requires (see *R.* v. *Stratton* (1809), 1 Camp. 549, n.).

(*p*) See 1 Hawk. P. C., c. 72, s. 8; *R.* v. *Whitehouse* (1852), 6 Cox, C. C. 38. But husband and wife may be tried for a conspiracy entered into by them before marriage (*R.* v. *Robinson*, *supra*).

(*q*) *R.* v. *Manning* (1883), 12 Q. B. D. 241; *R.* v. *Plummer*, [1902] 2 K. B. 339; and see *R.* v. *Thompson* (1851), 16 Q. B. 832. One person may singly be convicted of conspiring with another person who has not been tried (*R.* v. *Kinnersley* (1719), 1 Stra. 193; *R.* v. *Nichols* (1742), 13 East 412, n.; *R.* v. *Cooke* (1826), 5 B. & C. 538; *R.* v. *Kenrick* (1843), 5 Q. B. 49; *R.* v. *Ahearne* (1852), 2 I. C. L. R. 381, C. C. R.; *R.* v. *Duguid* (1906), 75 L. J. (K. B.) 470, C. C. R.). The other conspirator may be tried afterwards, but if he is acquitted, the first conviction cannot stand (*R.* v. *Cooke* *supra*; *R.* v. *Plummer*, *supra*).

(*r*) As to misprision of treason, see title CONSTITUTIONAL LAW, Vol. VI.

Part II.—Original Criminal Jurisdiction(s).

SECT. 1.—*Courts of Ordinary Criminal Jurisdiction.*

SECT. 1. Courts of Ordinary Criminal Jurisdiction.

547. The courts which exercise original criminal jurisdiction, and which administer the ordinary criminal law in England, are the following:—(1) The High Court of Parliament; (2) the King's Bench Division of the High Court of Justice; (3) the Courts of Assize and of Oyer and Terminer and General Gaol Delivery; (4) the Central Criminal Court; (5) the Courts of Quarter Sessions of the Peace; (6) the Courts of Justices of the Peace sitting in petty sessions. The first four are superior courts; the remaining two are inferior courts. All except the last are courts of record. Criminal courts.

SUB-SECT. 1.—*High Court of Parliament.*

548. The High Court of Parliament (*t*) is the supreme court in the kingdom, and has power to try "great and enormous offenders," whether lords or commoners, by the process of impeachment. Parliament,

In impeachment the House of Commons, acting as the most solemn grand inquest of the kingdom, presents the offender for trial by the House of Lords, who sit as judges under the presidency of the Lord High Steward, if a peer is impeached, or of the Lord Chancellor or Speaker of the House of Lords, if a commoner is impeached (*u*). Impeachment.

The trial is conducted by managers appointed by the House of Commons, who draw up articles of impeachment; the trial is governed by the general principles of the criminal law, but matters of procedure are determined by the law of Parliament (*v*). Procedure.

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p. 353, and *R.* v. *Thistlewood* (1820), 33 State Tr. 681, *per* ABBOTT, C.J., at p. 690; *Trials of the Regicides* (1660), 5 State Tr. 947, at p. 985; *R.* v. *Tonge* (1662), 6 State Tr. 226, n.; *R.* v. *Walcot* (1683), 9 State Tr. 519, at p. 553; and stat. 1 & 2 Ph. & M. c. 10). As to misprision of felony, see Proceedings under a Special Commission for the County of York (1813), 31 State Tr., the charge of THOMPSON, B., at p. 969; *Williams* v. *Bayley* (1866), L. R. 1 H. L. 200, *per* Lord WESTBURY, at p. 220, where it is said that the words "misprision of felony" have now "somewhat passed into desuetude." There is no modern instance of any prosecution either for misprision of treason or for misprision of felony, see p. 503, *post;* as to infants, see note (*q*), p. 240, *ante.*

(*s*) For Court of Criminal Appeal, see p. 432, *post*, and title COURTS, p. 91, *ante.*

(*t*) See title COURTS, p. 20, *ante.*

(*u*) Anson, Law and Custom of the Constitution, 4th ed., I., 364. See also title COURTS, p. 19, *ante.*

(*v*) See 4 Bl. Com. 256. Report made on the 30th April, 1794, from the Committee of the House of Commons appointed to inspect the Lords' Journals relative to their proceedings on the trial of Warren Hastings (Works of Edmund Burke, ed. 1826 (Rivington), Vol. XIV., 289, 294, 304, 355). Acts of attainder and of pains and penalties, although involving sentence and punishment, are legislative in form; the parties concerned, however, are admitted to defend themselves by counsel and witnesses before both Houses (Erskine May, Parliamentary Practice, 11th ed., 670). Such Acts are new laws, and not an execution of those already in being (4 Bl. Com. 256).

SECT. 1. Courts of Ordinary Criminal Jurisdiction.

The House of Lords has also original jurisdiction to try peers indicted for treason or felony (*w*).

SUB-SECT. 2.—*High Court of Justice—King's Bench Division.*

King's Bench Division of High Court of Justice.

549. The King's Bench Division of the High Court of Justice (*a*) on its Crown side has cognisance of all criminal causes from treason down to the most trivial misdemeanour or breach of the peace (*b*). It is a permanent court of oyer and terminer, and is the principal court of criminal jurisdiction (*c*). In addition to an original jurisdiction to try indictments found by the grand jury of the counties of London and Middlesex (*d*) it has jurisdiction to try indictments removed into it by writ of *certiorari*, to try informations for certain misdemeanours, filed *ex officio* by the Attorney-General or by the Master of the Crown Office on the suggestion of a private individual (*e*).

The King's Bench Division of the High Court of Justice is the only court before which a corporation can be tried on indictment, as only in that court can a corporation plead by attorney, and this is the only way in which a corporation can plead at all (*f*).

SUB-SECT. 3.—*Courts of Assize, Oyer and Terminer, and Gaol Delivery.*

Assize courts.

550. The courts of assize and of oyer and terminer and general gaol delivery are courts which are held at regular intervals under royal commissions in every county or assize district of England, except Middlesex, the City of London, and other counties and parts of counties within the district of the Central Criminal Court (*g*). Separate commissions are made out for each county and for each county of a city and assize district on each circuit.

The commission of oyer and terminer gives the persons named in

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(*w*) See p. 270, *post*.

(*a*) See title COURTS, p. 55, *ante*.

(*b*) 4 Bl. Com. 262; Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 34.

(*c*) It has a special and peculiar jurisdiction over treasons committed abroad (see *R.* v. *Lynch* (1903), Official Report), and over criminal and fraudulent acts committed by persons in public employment abroad in the exercise of their employment, and over the offence of wilfully neglecting or delaying to deliver or transmit writs for the election of members of Parliament (Parliamentary Writs Act, 1813 (53 Geo. 3, c. 89), s. 6). See also *R.* v. *Eyre* (1868), L. R. 3 Q. B. 487.

(*d*) See *R.* v. *Castro* (1874), L. R. 9 Q. B. 350. It is not necessary to summon a grand jury, unless the Master of the Crown Office has before the fourth day of the sittings received notice of some business intended to be brought before them (Middlesex Grand Juries Act, 1872 (35 & 36 Vict. c. 52; and see Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 89 (3); R. S. C., Jan. 15, 1903).

(*e*) See p. 329, *post*.

(*f*) See *R.* v. *Birmingham and Gloucester Rail. Co.* (1840), 9 C. & P. 469. If an indictment is found elsewhere against a corporation, the proper course is to remove the indictment by *certiorari* (*ibid.*). See also title CORPORATIONS, Vol. VIII., p. 392.

(*g*) For a list of the circuits, see title BARRISTERS, Vol. II., p. 366. Assizes are held at certain towns on the Northern and North-Eastern circuits four times a year; on the other circuits three times a year. As to the dates for holding them, see Order in Council of 19th March, 1908, W. N.,

the commission authority to hear and determine all treasons, felonies and misdemeanours committed within the county, city, or district named in the commission; the commission of gaol delivery empowers the commissioners to try and deliver every prisoner who is in the gaol awaiting trial, or has been committed to the gaol, when they arrive at the circuit town (*h*).

The commission of assize relates partly to civil and partly to criminal matters, and enables the persons therein named to exercise any civil and criminal jurisdiction capable of being exercised by the High Court of Justice (*i*).

The King may grant special commissions of oyer and terminer and gaol delivery to particular places, or for the trial of particular persons.

Central Criminal Court.

551. For London and the adjacent district a special court of oyer and terminer and gaol delivery is provided in the Central Criminal Court (*k*).

SUB-SECT. 4.—*Courts of Quarter Sessions.*

Quarter sessions.

552. The courts of quarter sessions of the peace are inferior courts of record. In counties they are composed of justices, who sit together under the commission of the peace issued for the county to try certain indictable offences (*l*). In boroughs which have a separate court of quarter sessions, and which come under the Municipal Corporations Act, 1882 (*m*), the court is held by the recorder, and he is the sole judge (*n*).

4th April, 1908, p. 91. See also Order in Council of 28th June, 1909 (*London Gazette*, July 2, 1909), and p. 72, *ante*.

(*h*) 4 Bl. Com. 267. But see now the Assizes Relief Act, 1889 (52 & 53 Vict. c. 12), s. 1. A court of oyer and terminer or general gaol delivery is not now required to deliver from gaol a person who has been committed for trial at quarter sessions, unless the High Court of Justice so directs, or unless the person is not tried at the next court of quarter sessions after his committal (*ibid.*, ss. 1, 3). Under the commissions of oyer and terminer and gaol delivery the commissioners can proceed not only upon indictments found at the same assizes, but also upon indictments found at previous assizes and upon indictments found at quarter sessions which have been removed to the assizes, either because they are not triable at quarter sessions, or because the court of quarter sessions has made a special order for their removal. See p. 268 (note), *post*.

(*i*) See also Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16 (11), s. 29, making assize courts a branch of the High Court. A commissioner of assize appointed in pursuance of s. 29 of the Act, when engaged in the exercise of any jurisdiction assigned to him in pursuance of the Act, is to be deemed to be a court of the High Court of Justice (see *R.* v. *Dudley* (1884), 14 Q. B. D. 273, 560; *R.* v. *Parke*, [1903] 2 K. B. 432, *per* WILLS, J., at p. 436). See also title COURTS, p. 72, *ante*.

(*k*) As to the Central Criminal Court, see title COURTS, p. 87, *ante*.

(*l*) For Courts of Quarter Sessions, see titles COURTS, p. 82, *ante*; MAGISTRATES. For the present form of the commission of the peace in counties, see Statutory Rules and Orders Revised, Vol. II., Clerk of the Crown in Chancery, p. 10. See *Keen* v. *R.* (1847), 10 Q. B. 928. In quarter sessions in counties two justices at the least must be present to form a court.

(*m*) 45 & 46 Vict. c. 50, s. 162.

(*n*) *Ibid.*, s. 165. The City of London does not come under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50) (see s. 6 of that Act and

SECT. 1. Courts of Ordinary Criminal Jurisdiction.

SUB-SECT. 5.—*Justices of the Peace.*

Petty sessions.

553. The courts of justices of the peace sitting in petty sessions are inferior courts composed of justices sitting either as a court of summary jurisdiction or to hold a preliminary inquiry when a person is charged with an indictable offence. When so sitting justices act without the intervention of a jury (*o*).

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the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), s. 1 and Scheds. A and B). It has a court of quarter sessions of the peace, the judges of which are the Lord Mayor, Recorder, and aldermen (see Charter of Charles I. of 1638, Charter of George II., 1741, Historical Charters etc. of the City of London, pp. 170 and 290); but their power to try indictments in felonies and misdemeanours of a serious nature was taken away by s. 17 of the Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36). Indictments may still be preferred and found at these sessions (see s. 19). The court chiefly sits now to hear appeals (see Pulling, Laws and Customs of the City of London, p. 217, and see Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40 (3), s. 41, s. 42 (13), s. 100, definition of "quarter sessions").

The courts of quarter sessions have authority over all common law offences against the peace which are not expressly withdrawn from them (see Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1), and, it seems, over all offences against any statute made concerning the peace (*R.* v. *Alsop* (1691), 4 Mod. Rep. 49, *per* HOLT, C.J., at p. 51). It seems a matter of some doubt to what extent they have jurisdiction over offences newly created by statute which do not affect the peace, and which do not expressly or by implication give them or deprive them of jurisdiction (see 4 Bl. Com. 268; *R.* v. *Buggs* (1694), 4 Mod. Rep. 379; *R.* v. *Smith* (1705), 2 Ld. Raym. 1144; *R.* v. *Yarrington* (1711), 1 Salk. 406; Com. Dig. Justices of Peace, B, 3; *R.* v. *Cock* (1815), 4 M. & S. 71). If an indictment is found at quarter sessions for a crime which the court has no jurisdiction to try, the proper course is to transmit it to the assizes for trial there (see Assizes Relief Act, 1889 (52 & 53 Vict. c. 12), s. 5; Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), s. 19); an indictment that is so transmitted must be tried at the assizes (*R.* v. *Wetherell* (1819), Russ. & Ry. 381), and no order can be made, or is needed, to require the clerk of the peace of the county, where the indictment is found, to return it to the clerk of assize (*R.* v. *Wildman* (1872), 12 Cox, C. C. 354).

It was held before the Judicature Act, 1873 (36 & 37 Vict. c. 66), that the authority of quarter sessions, whether for a county or a borough, is not in law determined or suspended by the coming of the judges into the county under their commissions of assize, oyer and terminer, and general gaol delivery, but that it would be inconsistent and improper that courts of quarter sessions should be held concurrently with the assizes for the same county (*Smith* v. *R.* (1849), 13 Q. B. 738); see 9 C. & P. 790). But *quære* whether the effect of s. 29 of that Act is not to alter the law, so that the authority of quarter sessions would be now determined or suspended (*Smith* v. *R.*, *supra*, at p. 741); but as to quarter sessions in the district of the Central Criminal Court, see the Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), s. 21.

(*o*) See also titles COURTS, p. 74, *ante*; MAGISTRATES. The powers of justices are defined by the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), and the Summary Jurisdiction Acts (11 & 12 Vict. c. 43; 20 & 21 Vict. c. 43; 26 & 27 Vict. c. 77; 42 & 43 Vict. c. 49; 47 & 48 Vict. c. 43; 62 & 63 Vict. c. 22); see title MAGISTRATES. Even indictable offences can in some cases be summarily dealt with by justices. If a child (*i.e.* a person who in the opinion of the court before whom he is brought is under the age of fourteen) is charged before a court of summary jurisdiction with an indictable offence other than homicide, the court may deal with it summarily, if it thinks it expedient and if the parent or guardian of the child when informed by the court of the right to have the child tried by a jury does not object (Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 10, 49; Children Act, 1908 (8 Edw. 7, c. 67), s. 128). There are similar powers to deal summarily with a "young person" (*i.e.* a person who in the opinion of the court before whom he is

SECT. 2.—*Courts of Special Criminal Jurisdiction.*

SUB-SECT. 1.—*Coroners' Courts.*

SECT. 2. Courts of Special Criminal Jurisdiction

Coroner's court.

554. The coroner's court is a common law court of record, the function of which in criminal matters is to inquire into the cause of the death of any person whose dead body is lying within the coroner's jurisdiction, if there is reasonable cause to suspect that such person has died a violent or an unnatural death or a sudden death the cause of which is unknown, or has died in prison,

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brought is of the age of fourteen and under the age of sixteen) charged with an indictable offence other than homicide, if the young person consents to be summarily dealt with (*ibid.*, ss. 11, 49; Summary Jurisdiction Act, 1899 (62 & 63 Vict. c. 22), s. 2; Children Act, 1908 (8 Edw. 7, c. 67), s. 128). An adult (*i.e.* a person who in the opinion of the court is sixteen years old or more) who is charged with certain indictable offences may be dealt with summarily, if he pleads guilty; if he does not plead guilty but consents to be dealt with summarily, he may be dealt with summarily, if the value of the property taken or obtained or the damage done does not exceed 40*s*. The indictable offences in question are simple larceny or an offence punishable as simple larceny; larceny from the person; larceny by a clerk or servant; embezzlement; receiving stolen goods; aiding, abetting etc. the commission of simple larceny etc.; attempting to commit simple larceny etc.; obtaining or attempting to obtain a chattel etc. by false pretences; unlawfully and maliciously setting fire to a wood (Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 12, 13, and Schedule, and Summary Jurisdiction Act, 1899 (62 & 63 Vict. c. 22), Schedule). A court of summary jurisdiction, with the consent of an adult, may deal summarily with an indecent assault upon a person who in the opinion of the court is under the age of sixteen years (Children Act, 1908 (8 Edw. 7, c. 67), s. 128 and Sched. II. A court of summary jurisdiction, with the consent of the accused, may deal summarily with a charge against a proprietor, publisher, editor, or any person responsible for the publication of a newspaper, for a libel published in the newspaper, if the court is of opinion that, though the person charged is shown to have been guilty, the libel was of a trivial character and that the offence may be adequately punished by a fine not exceeding £50 (Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), s. 5). Offences mentioned in the First Schedule to the Inebriates Act, 1898 (61 & 62 Vict. c. 60), may also, with the consent of the accused, be dealt with summarily (s. 2 (2)). An adult who is charged before a court of summary jurisdiction with an indictable offence with which the court could deal summarily, if the adult pleaded guilty or consented, but who has been previously convicted, and is in consequence liable to punishment by penal servitude for the offence with which he is charged, cannot be summarily dealt with (Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 14). As regards all indictable offences with which justices cannot deal summarily, they hear the witnesses, take their depositions in writing, and, if they decide to commit for trial, bind the prosecutor and witnesses to attend at the court before which the prisoner is to be tried. In cases which may be tried either at quarter sessions or at assizes, the justices have thus the power of designating the court which is to try the accused (Assizes Relief Act, 1889 (52 & 53 Vict. c. 12), s. 1; and see p. 326, *post*). As regards offences not properly indictable with which the justices may deal summarily, a defendant may in cases where he is liable to imprisonment for a term exceeding three months claim to be tried by a jury; if a defendant so claim, he must be indicted (Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 17). There are other cases of offences punishable on summary conviction in which a defendant may elect to be tried on indictment (see, *e.g.*, Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 9; Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2 (6). In such a case a defendant must be told that he has a right to be tried by a jury, and if he is not told and is convicted, the conviction is bad (*R.* v. *Cockshott* (1898), 67 L. J. (Q. B.) 467; *R.* v. *Beesby*, [1909] 1 K. B. 849). *R* v. *Fowler* (1895) 64 L. J. (M. C.) 9, was disapproved of in *R.* v. *Beesby*, *supra*.

SECT. 2. Courts of Special Criminal Jurisdiction.

or in such place and in such circumstances as to require an inquest in pursuance of any Act of Parliament (*p*).

SUB-SECT. 2.—*Special Tribunals.*

Court of the King in Parliament.

555. There are certain tribunals which only have jurisdiction over particular classes of persons. A man can only be tried by his peers or equals, and therefore a peer who is indicted for treason or felony or misprision of treason or felony can only be tried by peers (*q*).

If Parliament is sitting, the trial is in the court of the King in Parliament; if it is not sitting, it is before the court of the Lord High Steward of Great Britain, who is appointed *pro hâc vice* only.

Where the trial is before the King in Parliament, a Lord High Steward is also appointed, but he is rather a speaker *pro tempore* or chairman of the court than judge (*r*).

Courts of the Universities of Oxford and Cambridge.

556. The courts of the chancellors of the Universities of Oxford and Cambridge have jurisdiction to try misdemeanours committed by resident members of the university and their servants.

If a prosecution for any such misdemeanour is commenced in the ordinary courts, the chancellor of the university may claim cognisance of the offence, and if the claim is made in due time and form, the case is withdrawn to the jurisdiction of the university court (*s*).

The chancellors of the universities, acting through their vice-chancellors, have also a special power of arresting and imprisoning females suspected of immorality and found consorting with undergraduates of the university (*t*).

(*p*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 1. See title CORONERS, Vol. VIII., p. 239.

(*q*) The privilege cannot be waived (3 Co. Inst. 30; *Dacre's (Lord) Case* (1534), Kel. 56). It extends to peers under age; Scotch and Irish peers, although they have no seat in the House of Lords; peeresses by birth and by marriage; and the widow of a peer, unless she is subsequently married to a commoner (1 Bl. Com. 262). The privilege does not extend to Bishops, who, even if they have a seat in the House of Lords, are not peers by virtue of their office, but are triable as commoners (Erskine May, Parliamentary Practice, 11th ed., p. 669). The indictment for treason or felony or misprision of treason or felony must first be found in a court of oyer and terminer or general gaol delivery or a court of quarter sessions which has jurisdiction over the offence, and must then be removed by *certiorari* (3 Co. Inst. 28).

(*r*) 4 Bl. Com. 258. For a modern instance of a trial before the King in Parliament, see *Russell's (Earl) Case*, [1901] A. C. 446. As to both these courts, see title COURTS, pp. 19, 26, *ante*.

(*s*) See 13 Eliz. c. 29; *Castle* v. *Lichfield* (1670), Hard. 505; *Welles* v. *Trahern* (1740), Willes, 233; *Kendrick* v. *Kynaston* (1764), 1 Wm. Bl. 454; *Hayes* v. *Long* (1766), 2 Wils. 310; *R.* v. *Agar* (1772), 5 Burr. 2820; *R.* v. *Routledge* (1780), 2 Doug. (K. B.) 531; *Williams* v. *Brickenden* (1809), 11 East, 543; *Browne* v. *Renouard* (1810), 12 East, 12; *Thornton* v. *Ford* (1812), 15 East, 634; *Ginnett* v. *Whittingham* (1886), 16 Q. B. D. 761. As regards Cambridge, the right to claim cognisance is limited to proceedings in which a member of the university is a party (Cambridge Award Act, 1856 (19 Vict. c. xvii.), s. 18). In cases of treason, felony and mayhem, if cognisance is claimed, the offence is tried in the court of the Lord High Steward of the university and a jury (see 4 Bl. Com. 275). See further title COURTS, pp. 149 and 187, *ante*.

(*t*) See *Kemp* v. *Neville* (1861), 10 C. B. (N. S.) 523; *Ex parte Daisy Hopkins*, (1891), 61 L. J. (Q. B.) 240; Universities Act, 1825 (6 Geo. 4, c. 97).

Courts-martial.

557. Criminal jurisdiction in regard to offences which are punishable, and offences which are not punishable, by the ordinary courts is exercised over persons subject to military law by courts-martial instituted under the Army Act, 1881 (*u*), but such persons are not exempt from the jurisdiction of the ordinary courts in cases where both the ordinary courts and the courts-martial have jurisdiction (*v*).

Naval courts.

As regards persons subject to naval law, a similar jurisdiction is exercised by courts constituted under the Naval Discipline Act, 1866 (*w*), but this jurisdiction does not exclude that of the ordinary civil courts (*a*).

Military and naval courts are not bound by the ordinary criminal law, except in so far as that law has been incorporated in the Acts which authorise the establishment of such courts (*b*). Such courts, however, are subject to the controlling authority of the High Court of Justice, which will be exercised if they exceed their jurisdiction (*c*).

Ecclesiastical courts.

558. The ecclesiastical courts, which exercise a jurisdiction of a criminal nature over the clergy and other members of the Church of England, do not administer the criminal law of the realm, but proceed according to the canon law or the special statutes which give these courts jurisdiction (*d*).

SECT. 3.—*The Limits of Criminal Jurisdiction.*

Persons over whom English criminal courts exercise jurisdiction.

559. English courts exercise criminal jurisdiction (1) in respect of acts done by all persons, whether British subjects or aliens, within the territory of England, or on board a British ship on the high seas, or in places where great ships generally go, or on the open sea within the territorial waters of the King's dominions; (2) in respect of acts done by British subjects on land abroad, or on any ship on the high seas which is not British.

Jurisdiction in respect of acts committed in England is the jurisdiction of the common law. Jurisdiction in respect of acts committed on board a British ship on the high seas is the Admiralty jurisdiction. Jurisdiction in respect of acts committed elsewhere is derived from statute (*e*).

(*u*) 44 & 45 Vict. c. 58, ss. 69, 70.

(*v*) *Ibid.*, s. 162; and see title COURTS, p. 108, *ante*.

(*w*) 29 & 30 Vict. c. 109, ss. 56, 58.

(*a*) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 101.

(*b*) See title COURTS, p. 97, *ante*.

(*c*) See *Grant* v. *Gould* (1792), 2 Hy. Bl. 69, at p. 100. As to liability in respect of acts done under martial law, see *Ex parte Marais*, [1902] A. C. 109, P. C., charge of COCKBURN, C.J., to the grand jury in *R.* v. *Nelson* (1867), ed. by F. Cockburn; charge of BLACKBURN, J., to the grand jury in *R.* v. *Eyre* (1868), reported by W. F. Finlason, 55; *Phillips* v. *Eyre* (1870), L. R. 6 Q. B. 1, Ex. Ch.; A. V. Dicey, Introduction to the Study of the Laws of the Constitution, 7th ed., 538.

(*d*) See title ECCLESIASTICAL LAW.

(*e*) *Macleod* v. *A.-G. for New South Wales*, [1891] A. C. 455, P. C. All crime is local. The jurisdiction over the crime belongs to the country where the crime is committed, and except over British subjects the King and the Legislature have no power out of this country (*ibid.*, *per* Lord HALSBURY, L.C., at p. 458); *Sirdar Gurdyal Singh* v. *Rajah of Faridkote*, [1894] A. C. 670, P. C., *per* Lord SELBORNE, at p. 683; *Badische Anilin und Soda Fabrik* v. *Basle Chemical*

SECT. 3. **The Limits of Criminal Jurisdiction.**

SUB-SECT. 1.—*Common Law Jurisdiction.*

Criminal jurisdiction at common law.

560. At common law the exercise of criminal jurisdiction is limited to crimes committed within the land of England with its ports and harbours, bays, gulfs and estuaries, and so much of the outer coast as extends to low-water mark (*f*). The courts of common law have always exercised jurisdiction over all persons who committed crimes within these limits, whether such persons were subjects of the King or resident aliens or mere casual and temporary alien visitors (*g*). In respect of acts done outside those limits there was no jurisdiction at common law (*h*).

Works, [1898] A. C. 200. The jurisdiction over acts done on a British ship is founded on the fiction that "a ship which bears a nation's flag is to be treated as a part of the territory of that nation" (*R.* v. *Anderson* (1868), L. R. 1 C. C. R. 161, *per* BLACKBURN, J., at p. 163, and *per* BOVILL, C.J., at p. 166; *Forbes* v. *Cochrane* (1824), 2 B. & C. 448, at p. 464, and at p. 467; but see *R.* v. *Lesley* (1860), Bell, C. C. 220, *per* ERLE, C.J., at p. 233, "although an English ship in some respects carries with her the laws of her country in the territorial waters of a foreign state, yet in other respects she is subject to the laws of that state as to acts done to the subjects thereof." The jurisdiction over British subjects in respect of acts committed abroad is purely statutory, and is based on the allegiance of the subject to the Sovereign, and on the power of the Sovereign, by reason of this allegiance, to pass laws for the regulation of the conduct of subjects wherever they are. See *Sussex Peerage Case* (1844), 11 Cl. & Fin. 85, H. L., *per* TINDAL, C.J., at p. 146. Apart from statute the general principle of criminal jurisprudence is that the quality of an act depends on the law of the place where it is done (*A.-G. for the Colony of Hong Kong* v. *Kwok-a-Sing* (1873), L. R. 5 P. C. 179, *per* MELLISH, L.J., at p. 199).

(*f*) *R.* v. *Keyn* (1876), 2 Ex. D. 63, C. C. R., at p. 162. England includes Wales (stat. 27 Hen. 8, c. 26), but does not include Scotland, Ireland, the Isle of Man and the Channel Islands. See *Re Mitchell, Ex parte Cunningham* (1884), 13 Q. B. D. 418, C. A.

(*g*) *R.* v. *Keyn*, *supra*, at p. 160.

(*h*) *Ibid.*, at p. 168. For the purposes of criminal jurisdiction, an act may be regarded as done within English territory, although the person who did the act may be outside the territory; for instance, a person who, being abroad, procures an agent to commit a crime in England is deemed to commit an act in England (*R.* v. *Brisac* (1803), 4 East, 164; *Mr. Justice Johnson's Case* (1805), 29 State Tr. 81, at pp. 462, 499). If a person, being outside England, sends to England by post or otherwise with a criminal intent a fraudulent document or a libellous or obscene publication, he commits an act in England for which he is amenable to English jurisdiction (*R.* v. *Munton* (1793), 1 Esp. 62; *R.* v. *Oliphant*, [1905] 2 K. B. 67, C. C. R.; *R.* v. *Burdett* (1820), 4 B. & Ald. 95; *R.* v. *De Marny*, [1907] 1 K. B. 388, C. C. R.). Such a person, even though a foreigner, can be tried if he comes to England (*R.* v. *De Marny*, *supra*; *R.* v. *Oliphant*, [1905] 2 K. B. 67, C. C. R.). If a person, being outside English territory, were intentionally to fire at and kill a person in English territory in such a manner that the act amounts to murder, the person who fired could be tried for murder in England (*R.* v. *Coombes* (1785), 1 Leach, 388; and see *R.* v. *Rogers* (1877), 3 Q. B. D. 28, C. C. R., *per* FIELD, J., at p. 34); Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 10 (but see *Badische Anilin und Soda Fabrik* v. *Basle Chemical Works*, [1898] A. C. 200, at p. 204). *Quære*, whether the same rule would apply to manslaughter by negligence (see *R.* v. *Keyn* (1876), 2 Ex. D. 63, C. C. R., at p. 234). A person who makes a false representation outside England, and by means of such representation obtains goods in England, may be tried in England for the crime of obtaining goods by false pretences (*R.* v. *Ellis*, [1899] 1 Q. B. 230, C. C. R.). If the false representation is made by a letter written and posted in England, but sent to an address abroad, and money is by means of such a letter sent from abroad to and received in England, a crime is committed which is triable in England (*R.* v. *Holmes* (1883), 12 Q. B. D.

561. All acts done on a British ship, either on the high seas or in places where great ships go, are subject to the Admiralty jurisdiction, whether such acts are done by British subjects or by foreigners (*i*).

An act done on the high seas, but not on an English ship, is not, apart from statute, the subject of Admiralty jurisdiction, except in the case of piracy *jure gentium*, which is triable and punishable everywhere, no matter where or by whom it is committed (*k*).

23, C. C. R.), see p. 281, *post*. If an act is done by a foreigner outside England, and neither in English territorial waters nor on a British ship, the foreigner is not amenable to English criminal jurisdiction, although some consequence of the act may take place in England, *e.g.*, if a foreigner strikes someone abroad and the person struck comes to England and dies of the blow, there is no crime which is cognisable in England (*R.* v. *Lewis* (1857), 1 Dears. & B. 182; and see *R.* v. *Depardo* (1807), 1 Taunt. 26; *R.* v. *Mattos* (1836), 7 C. & P. 458). S. 10 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), has apparently no effect in a case of this kind (see note (*q*) on p. 289, *post*). But the case will be otherwise where the act is a continuous one, some part of which is deemed to be performed in this country (see *R.* v. *De Marny* and other cases cited *supra*). An alien enemy who comes into the realm in a hostile way cannot be tried for treason, for the essence of that crime is violation of the allegiance which a subject or resident or commorant alien owes to the Sovereign, but which an alien enemy does not owe (*Perkin Warbeck's Case* (1500), 7 Co. Rep. 6 b). But an alien enemy who is a prisoner of war may, it seems, commit crimes for which he is triable and punishable here (see *Moliere's Case* (1758), Fost. 188, n., and the observations of Lord ELLENBOROUGH, C.J., in *R.* v. *Johnson* (1805), 6 East, 583, at p. 593, and *Sauvajot's* and *Acow's Cases*, cited in *R.* v. *Depardo*, *supra*, at p. 32.

(*i*) See *R.* v. *Anderson* (1868), L. R. 1 C. C. R. 161; *R.* v. *Keyn* (1876), 2 Ex. D. 63, C. C. R., at p. 162; *R.* v. *Carr* (1882), 10 Q. B. D. 76, C. C. R.; *R.* v. *Allen* (1837), 1 Mood. C. C. 494; Offences at Sea Act, 1536 (28 Hen. 8, c. 15). In *R.* v. *Anderson*, *supra*, it was held that an American citizen serving on a British ship was rightly convicted at the Central Criminal Court for the manslaughter of another American citizen serving on the same ship in the river Garonne within French territory about ninety miles from the sea, but at a place where the tide ebbed and flowed and great ships went. And in *R.* v. *Carr*, *supra* (which was decided at a time when it was no offence to receive in England goods that had been stolen abroad; see p. 680, *post*), it was held that a larceny committed on board a British ship while she was lying afloat in the river Maas at Rotterdam, and moored to the quay in a place where large vessels usually lay, was an act that took place within the jurisdiction of the Admiralty, and that persons who received the stolen goods in England could be tried at the Central Criminal Court. A hulk which retains the general appointments of a British ship, which is registered as a British ship and hoists the British ensign, but which is used as a floating warehouse, is sufficiently a British ship to be within the Admiralty jurisdiction (*R.* v. *Armstrong* (1875), 13 Cox, C. C. 184). It is not necessary that the criminal act should be completed on board the ship, if part of it is done on board (*ibid.*). Where a British man-of-war, acting in supposed execution of a treaty which enabled a British man-of-war to seize a Brazilian vessel if it had slaves on board, captured a Brazilian vessel which did not have slaves on board, it was held that the capture, being unlawful, did not make the Brazilian vessel a British ship, and that a crime alleged to have been committed on the Brazilian vessel while it was in the possession of the British man-of-war was not cognisable in the English courts (*R.* v. *Serva* (1845), 1 Den. 104).

(*k*) *R.* v. *Keyn* (1876), 2 Ex. D. 63, C. C. R., at p. 168; *A.-G. for Colony of Hong Kong* v. *Kwok-a-Sing* (1873), L. R. 5 P. C. 179. See for piracy *jure gentium*, p. 523, *post*.

SECT. 3. The Limits of Criminal Jurisdiction.

562. As regards so much of the coast of England as is between high and low water mark, and as regards the estuaries of English rivers and land-locked bays *inter fauces terræ*, the common law and the Admiralty have concurrent jurisdiction (*l*).

Trial by commissioners.

563. Crimes subject to Admiralty jurisdiction were originally tried by the Court of the Admiral, according to the civil law (*m*), but the criminal jurisdiction of such court was transferred by the Offences at Sea Act (*n*) to commissioners appointed by the King.

Such commissioners were to try offences committed within the Admiralty jurisdiction in such county as their commissions might direct, and "according to the common course of the laws of the realm used for such offences when done upon the land within the realm" (*o*). It is not now the practice to issue these commissions, as offences committed within Admiralty jurisdiction may now be tried by the ordinary superior criminal courts (*p*).

Trial of crimes subject to Admiralty jurisdiction in ordinary criminal courts.

564. The Central Criminal Court has power to try offences committed on the high seas and other places within the jurisdiction of the Admiralty (*q*), and the justices of assize and other commissioners holding a court under any of the King's commissions of oyer and terminer or general gaol delivery may try any person for criminal acts done within the Admiralty jurisdiction, if such person is committed to, or imprisoned in, any gaol in any county or franchise within the limits of their commissions (*r*).

(*l*) *R.* v. *Keyn* (1876), 2 Ex. D. 63, C. C. R., at p. 168; see also stat. (1391) 15 Rich. 2, c. 3; *R.* v. *Bruce* (1812), Russ. & Ry. 243; *R.* v. *Mannion* (1846), 2 Cox, C. C. 158, C. C. R.; *R.* v. *Cunningham* (1859), Bell, C. C. 72. See also title ADMIRALTY, Vol. I., p. 59.

(*m*) See Offences at Sea Act, 1536 (28 Hen. 8, c. 15), preamble.

(*n*) (1536) 28 Hen. 8, c. 15.

(*o*) *Ibid.* For instances of trials under commissions issued under this statute, see *Dawson's Case* (1696), 13 State Tr. 451; *Bonnet's Case* (1718), 15 State Tr. 1231; *Codling's Case* (1802), 28 State Tr. 178; *R.* v. *Bruce* (1812), Russ. & Ry. 243. The statute simply transferred the jurisdiction of the Court of the Admiral to the common law courts to be exercised according to the procedure of the common law (*R.* v. *Keyn*, *supra*, at p. 169). The jurisdiction of commissioners appointed under this statute was enlarged by stat. (1698) 11 Will. 3, c. 7; the Piracy Act, 1721 (8 Geo. 1, c. 24); the Piracy Act, 1744 (18 Geo. 2, c. 30); and the Slave Trade Act, 1824 (5 Geo. 4, c. 113), which extended the definition of piracy (see p. 526, *post*). The Offences at Sea Act, 1799 (39 Geo. 3, c. 37), extended the jurisdiction of the commissioners to every offence committed on the high seas, out of the body of a county, which would have been an offence if it had been committed upon the land (see *R.* v. *Bailey* (1800), Russ. & Ry. 1; *R.* v. *Amarro* (1814), Russ. & Ry. 286. See Slave Trade Act, 1873 (36 & 37 Vict. c. 88), s. 26).

(*p*) See note (*r*), *infra*.

(*q*) Central Criminal Court Act, 1836 (4 & 5 Will. 4, c. 36), s. 22; see *R.* v. *Wallace* (1841), 2 Mood. C. C. 200.

(*r*) Admiralty Offences Act, 1844 (7 & 8 Vict. c. 2), s. 1. The Admiralty Offences Act, 1826 (7 Geo. 4, c. 38), gave justices of the peace power to take examinations concerning offences committed within the Admiralty jurisdiction and to cause persons who committed such offences to be apprehended. The Admiralty Offences Act, 1844 (7 & 8 Vict. c. 2), s. 3, empowers justices to commit such offenders to the prison to which a person would be committed who committed an offence on land within the jurisdiction of the justices (see Indictable Offences Act, 1848 (11 & 12 Vict, c. 42), s. 2). As to the trial of persons who, within the jurisdiction of the Admiralty, become accessories to a felony, see the Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), ss. 7, 9; and see *R.* v.

565. All the indictable offences mentioned in the Larceny Act, 1861 (*s*), the Malicious Damage Act, 1861 (*t*), the Forgery Act, 1861 (*u*), the Coinage Offences Act, 1861 (*x*), and the Offences against the Person Act, 1861 (*a*), if committed within the Admiralty jurisdiction, are to be deemed to be offences of the same nature and punishable in the same manner as if they had been committed

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Wallace (1841), 2 Mood. C. C. 200. Persons who have committed offences within the Admiralty jurisdiction may be tried in English colonies, or in places abroad outside the British dominions, where the King has power of jurisdiction (see Offences at Sea Act, 1806 (46 Geo. 3, c. 54); Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict. c. 96), s. 1; and Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), s. 6). All offences against property or persons committed either ashore or afloat out of the King's dominions by any master, seaman or apprentice who, when the offence is committed, is, or within three months previously has been, employed in any British ship, are punishable and triable as if they were offences committed within the Admiralty jurisdiction; Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 687; and see *R.* v. *Dudley* (1884), 14 Q. B. D. 273, at p. 281, which decided, under the corresponding section of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), that the judge of assize sitting at Exeter had jurisdiction to try seamen formerly belonging to a British ship which had been wrecked who committed murder in an open boat on the high seas. Any court in the King's dominions which could try an offence committed on board a British ship within the limits of its ordinary jurisdiction may try a British subject charged with committing an offence on board any British ship on the high seas or in any foreign port or harbour or on board any foreign ship to which he does not belong, or an alien charged with committing an offence on board a British ship on the high seas, if such person is found within the jurisdiction of the court (Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 686; see *R.* v. *Lopez* (1858), 1 Dears. & B. 525, and *R.* v. *Menham* (1858), 1 F. & F. 369). The last-mentioned section applies, even although the prisoner is a foreigner and has been brought within the jurisdiction of the court against his will (*R.* v. *Lopez*, *supra*). If a person on a British ship in the territorial waters of a foreign state, acting under the lawful orders of the foreign state, commits an act in respect of subjects of the state which would be criminal but for such orders (*e.g.*, if he assaults and arrests such subjects), such person cannot be prosecuted in an English criminal court for such an act, so long as it is covered by the authority of the foreign state; but if such an act is continued outside the jurisdiction of the state (*e.g.*, by bringing the subjects of the foreign state in confinement to England), then such person can be punished in respect of so much of the act as is done outside the territory of the foreign state (*R.* v. *Lesley* (1860), Bell, C. C. 220; see *Dobree* v. *Napier* (1836), 2 Bing. (N. C.) 781). The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 686, does not apply to a foreigner on a foreign ship committing a negligent act which causes a collision with a British ship and the death of a person on board the British ship in consequence of such collision; such an act is not "an offence committed on board a British ship" (*R.* v. *Keyn* (1876), 2 Ex. D. 63, C. C. R.). "Ship" means for the purposes of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), every description of vessel used in navigation not propelled by oars (s. 742). Ss. 686 and 687 of the Act apply to all British ships whether registered or not (*ibid.*, s. 72; *R.* v. *Allen* (1866), 10 Cox, C. C. 405; *R.* v. *Seberg* (1870), L. R. 1 C. C. R. 264). The fact that a ship carries the British flag and is registered as a British ship is *primâ facie* evidence that it is a British ship, but if the ship is in fact owned by an unqualified person, *e.g.*, a foreigner, it is not a British ship, and the English courts have no jurisdiction to try an offence committed by a foreigner on board such a ship (*R.* v. *Bjornsen* (1865), Le. & Ca. 545).

(*s*) 24 & 25 Vict. c. 96, s. 115.
(*t*) 24 & 25 Vict. c. 97, s. 72.
(*u*) 24 & 25 Vict. c. 98, s. 50.
(*x*) 24 & 25 Vict. c. 99, s. 36.
(*a*) 24 & 25 Vict. c. 100, s. 68

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upon the land in England, and may be tried in any county in England in which the offender is apprehended or is in custody, in the same manner in all respects as if they had been actually committed in that county or place (*b*).

Crimes committed within the territorial waters.

566. Acts done on the open sea, within the territorial waters of the King's dominions, but not on a British ship, are not within common law jurisdiction, nor were they formerly within Admiralty jurisdiction (*c*). But such acts, although committed on board of, or by means of, a foreign ship have been brought by statute (*d*) within Admiralty jurisdiction, and subject to certain conditions (*e*) are triable as if they had been committed on a British ship.

SUB-SECT. 3.—*Jurisdiction in respect of Crimes committed out of England.*

Treason and oppression.

567. Treasons committed by a British subject out of England, and oppressions committed out of England by colonial governors, are triable in the King's Bench Division of the High Court of Justice, or before such commissioners and in such shire of the realm as may be assigned by the King's commission (*f*).

(*b*) See *R.* v. *Peel* (1862), Le. & Ca. 231, which decided that a person who stole goods on a British ship on the high seas between Madras and Point de Galle was rightly tried under s. 115 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), in the court of quarter sessions in the borough of Southampton, where he was apprehended.

(*c*) See *R.* v. *Keyn* (1876), 2 Ex. D. 63, C. C. R., which decided that a foreigner in command of a foreign ship, which while passing in the open sea within three miles of the shore of England ran into a British ship and killed a passenger on board the British ship, was not amenable to English criminal jurisdiction, although the facts were such as to amount to manslaughter in English law.

(*d*) Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73).

(*e*) Proceedings under the Act against a person who is not a British subject cannot be instituted in the United Kingdom, except with the consent of one of the principal Secretaries of State, and on his certificate that the institution of such proceedings is in his opinion expedient, or in any of the King's dominions out of the United Kingdom, except with leave of the governor of the part of the dominions in which the proceedings are to be instituted, and on his certificate that it is expedient that such proceedings should be instituted (Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), s. 3). In this Act the word "ship" has a more extensive meaning than in the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60) (see s. 742), and includes every description of ship, boat, or other floating craft (Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), s. 7). By "territorial waters" is meant such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of the King's dominions as is deemed by international law to be within the King's territorial sovereignty; for the purpose of any offence declared by the Act to be within Admiralty jurisdiction, any part of the open sea within one marine league of the coast, measured from low-water mark, is to be deemed to be open sea within the territorial waters of the King's dominions (Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), s. 7). *Quære* whether any offence is triable under the Territorial Waters Act, 1878 (41 & 42 Vict. c. 73), except an offence committed on a "ship" as defined by that Act. As to foreign sea-fishing boats within the exclusive fishery limits of the British Islands, see Sea Fisheries Act, 1883 (46 & 47 Vict. c. 22), s. 18, and title FISHERIES. See also *Mortensen* v. *Peters* (1906), 8 F. (Just. Cas.) 93.

(*f*) Stat. (1543) 35 Hen. 8, c. 2; 3 Co. Inst. 11; 4 Co. Inst. 124; (1698) stat. 11 Will. 3, c. 12; and see Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 34; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 89 (and see the rule under that section, Archbold's Criminal Pleading etc., 23rd ed., p. 195). For

Murder etc.

568. If any murder or manslaughter is committed on land out of the United Kingdom, whether within the King's dominions or not, and whether the person killed is or is not a subject of the King, any subject of the King who is accused of committing the offence may be tried in any county or place in England or Ireland in which he is apprehended or is in custody in the same manner as if the offence had been actually committed in that county or place (*g*).

Burning King's ships etc.

569. Any person who within the realm or in any place belonging to the realm wilfully and maliciously sets on fire any of the King's ships of war, arsenals, dockyards etc., may be tried for the offence either in any shire or county within the realm or in the place where the offence is committed (*h*).

Offences under Explosive Substances Act, 1883.

570. A subject of the King is triable in England, if without the King's dominions he unlawfully and maliciously does any act with intent to cause by an explosive substance an explosion in the United Kingdom of a nature likely to endanger life or cause serious injury to property, or who conspires to cause such an explosion (*i*).

Merchant Shipping Act, 1894.

571. A master or any other person belonging to a British ship who wrongfully forces on shore or leaves behind in any place on shore or at sea, in or out of the King's dominions, a seaman or apprentice

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a modern instance of a trial under stat. 35 Hen. 8, c. 2, in the King's Bench Division of the High Court of Justice, see *R.* v. *Lynch*, [1903] 1 K. B. 444, where a British subject was tried at the Royal Courts of Justice, London, for treason committed in South Africa. Treasons committed in Scotland are triable in Scotland, and not, it seems, in England (Treason Act, 1708 (7 Ann. c. 21), s. 4), unless by virtue of a special statute (see *R.* v. *Kinloch* (1746), 18 State Tr. 395; *R.* v. *Hardie* (1820), 1 State Tr. (N. S.) 609, at p. 661). Treasons committed by a native of Scotland upon the high sea or in any place out of Great Britain are triable either in Scotland or in such shire, stewartry, or county of Great Britain as shall be assigned by the King's commission (Treason Act, 1708 (7 Ann. c. 21), s. 7). For instances of persons tried in England for treasons committed in Ireland, see *Macguire's* (*Lord*) *Case* (1645), 4 State Tr. 653; *Plunket's Case* (1681), 8 State Tr. 447; 3 Co. Inst. 11. As to offences committed out of England by persons in the public service, see p. 289, *post*.

(*g*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 9. See *R.* v. *Nelson* (1867), reported by F. Cockburn. An alien while resident here is, it seems, a subject of the King within the meaning of this statute, as far as respects his liability for acts done in England, but not for acts done abroad (*R.* v. *Bernard* (1858), 8 State Tr. (N. S.) 887, *per* Lord CAMPBELL, C.J., at p. 1055; see Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 4). As to a conspiracy or a solicitation to murder an alien who is outside the King's dominions, see Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 4, which provides for most of the cases which were raised, but not decided, in *R.* v. *Bernard*, *supra*. It seems that to constitute an offence under that section some act must be done in England. An English subject who conspires abroad with someone in England to commit one of the acts prohibited by the section might, it seems, be tried in England, if his fellow-conspirator did any overt act in England in pursuance of the conspiracy (see Greaves, Criminal Law Consolidation Acts, 2nd ed., p. 37). A person who has been tried and convicted or acquitted by a court of competent jurisdiction in a foreign country cannot in respect of the same offence be tried again here (*R.* v. *Roche* (1775), 1 Leach, 134). As to the venue in cases of murder and manslaughter, where the injury is inflicted in England or Ireland and the death occurs elsewhere, or *vice versâ*, see p. 289, *post*.

(*h*) 12 Geo. 3, c. 24. See p. 773, *post*.

(*i*) Explosive Substances Act, 1883 (46 Vict. c. 3), s. 3; see p. 775, *post*.

SECT. 3. The Limits of Criminal Jurisdiction.

to the sea service before the completion of the voyage for which such seaman or apprentice was engaged, or before the return of the ship to the United Kingdom, is guilty of a misdemeanour (*k*), and may be tried in the place where the offence was committed, if such place is in the King's dominions, or in any place in the King's dominions in which the offender may be (*l*).

Foreign Enlistment Act, 1870.

572. The Foreign Enlistment Act, 1870 (*m*), extends to all the dominions of the King, including the adjacent territorial waters (*a*).

Any subject of the King or any foreigner temporarily resident in any part of the King's dominions who, being in the King's dominions, acts in contravention of the Act commits an offence for which he may be tried in the place where the offence was wholly or partly committed, if such place is in the King's dominions, or in any place in the King's dominions where the offender may be (*b*).

Official Secrets Act, 1889.

573. The acts which are made offences by the Official Secrets Act, 1889 (*c*), if committed by anyone in any part of the King's dominions and if committed by British officers or subjects elsewhere, are punishable in England or in the place where the offence was committed (*d*).

Commissioners for Oaths Act, 1889.

574. An offence under the Commissioners for Oaths Act, 1889 (*e*), whether committed within or without the King's dominions, may be tried in the county or place in the United Kingdom in which the person charged with the offence was apprehended or is in custody, and the offence is to be deemed to have been committed in that county or place (*f*).

Foreign Marriage Act, 1892.

575. A person who knowingly and wilfully makes a false oath or signs a false notice under the Foreign Marriage Act, 1892 (*g*), for the purpose of procuring a marriage, or who forbids a marriage under that Act by falsely representing himself to be a person whose consent to the marriage is required by law, if he knows such representation to be false, may be tried in any county in England as if the offence had been committed in that county (*h*).

Receipt of property stolen out of the United Kingdom.

576. If a person without lawful excuse receives or has in his possession in England property stolen outside the United Kingdom, with guilty knowledge that it has been stolen, he commits an offence triable in England (*i*).

(*k*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 187.
(*l*) *Ibid.*, s. 684.
(*m*) 33 & 34 Vict. c. 90. See p. 528, *post*.
(*a*) *Ibid.*, s. 2.
(*b*) *Ibid.*, s. 16.
(*c*) 52 & 53 Vict. c. 52. See p. 480, *post*.
(*d*) *Ibid.*, s. 6 (1). The place of trial for such offences is either any competent British court in the place where the offence was committed or the High Court or the Central Criminal Court in England (s. 6 (2)).
(*e*) 52 Vict. c. 10. See p. 536, *post*.
(*f*) *Ibid.*, s. 9.
(*g*) 55 & 56 Vict. c. 23.
(*h*) *Ibid.*, s. 15. The acts which are made criminal by this section are, from their nature, mostly acts which are done outside the King's dominions; so far as regards such acts, the section, it seems, only applies to British subjects (*R.* v. *Jameson*, [1896] 2 Q. B. 425, at p. 430).
(*i*) Larceny Act, 1896 (59 & 60 Vict. c. 52), s. 1 (1); see *R.* v. *Panssé* (1897),

Killing seals in Behring Sea.

577. It is an offence triable in England and elsewhere in the King's dominions for a subject of the King to kill, capture, or pursue fur seals within a zone of sixty miles around the Pribiloff Islands at any time or in a certain defined area of the Pacific Ocean in any year from the 1st May to the 31st July (*k*).

Statutes generally limited to United Kingdom.

578. A statute, unless it contains signs of a contrary intention, applies only to the United Kingdom; and if it makes certain acts criminal, such acts are in the absence of provision to the contrary only criminal, even in the case of British subjects, if done within the United Kingdom (*l*).

Foreigners.

579. Except in the case of piracy *jure gentium*, no person who is not a subject of the King can be tried in England in respect of any act which he commits outside the King's dominions (*m*).

SECT. 4.—*Venue.*

Area of jurisdiction of courts limited.

580. Every criminal court, except the High Court of Parliament and the King's Bench Division of the High Court of Justice, has its jurisdiction limited to some part of England, and unless expressly empowered by statute cannot try any crimes other than those committed within the area of its jurisdiction.

Venue.

581. The proper area of jurisdiction for the trial of a crime by indictment is called the venue (*n*).

The venue must be laid in the margin of every indictment, and no court has jurisdiction to try an indictment if the venue is not properly laid (*o*).

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61 J. P. 536, and p. 680, *post*. As to stealing etc. in one part of the United Kingdom and having possession of the stolen property in another part, see pp. 288, 681, *post*.

(*k*) Behring Sea Award Act, 1894 (57 Vict. c. 2), s. 1; see the First Schedule, arts. 1, 2. See also the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 745 (f).

(*l*) See *R.* v. *Jameson*, [1896] 2 Q. B. 425, *per* Lord RUSSELL, C.J., at p. 430; *R.* v. *Keyn* (1876), 2 Ex. D. 63, C. C. R., *per* COCKBURN, C.J., at p. 210; and compare *Niboyet* v. *Niboyet* (1878), 4 P. D. 1, C. A., at p. 19; *Colquhoun* v. *Heddon* (1890), 25 Q. B. D. 129, C. A., *per* Lord ESHER, M.R., at p. 135; *Jefferys* v. *Boosey* (1854), 4 H. L. Cas. 815, *per* Lord CRANWORTH, at p. 955; *Cope* v. *Doherty* (1858), 27 L. J. (CH.) 600, C. A.; *Thomson* v. *Advocate-General* (1845), 12 Cl. & Fin. 1, H. L.; *Ex parte Blair* (1879), 12 Ch. D. 532; *Adam* v. *British and Foreign Steamship Co.*, [1898] 2 Q. B. 430; *Davidsson* v. *Hill*, [1901] 2 K. B. 606; *Rosseter* v. *Cahlman* (1853), 22 L. J. (EX.) 128, *per* POLLOCK, C.B., at p. 129; *Tomalin* v. *Pearson*, [1909] 2 K. B. 61, at p. 64.

(*m*) *R.* v. *Lewis* (1857), 1 Dears. & B. 182; *R.* v. *Depardo* (1807), 1 Taunt. 26; *R.* v. *Jameson*, [1896] 2 Q. B. 425, at p. 430. And see p. 272, *ante*.

(*n*) Venue means the place from which a jury could be summoned originally by the writ of *venire facias juratores* (now abolished; see Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 104) to try the issues in civil and criminal trials. According to some authorities venue is the same as *visne* (*vicinetum*) or vicinage, and means a "place next to that where anything that comes to be tried is supposed to be done" (Termes de la Ley, *sub nom.* Venue). Originally on every trial some of the jury had to be of the same hundred, or sometimes of the same parish or neighbourhood, in which the thing was supposed to be done (*ibid.*). See generally as to venue, *British South Africa Co.* v. *Companhia de Mozambique*, [1893] A. C. 602.

(*o*) The area of jurisdiction must be either a county, an assize district, the

SECT. 4. **Venue.**

SUB-SECT. 1.—*At Common Law.*

Common law rule.

582. The common law rule is that the proper venue for the trial of a crime is the area of jurisdiction in which the place is where the crime was committed (*p*).

Statutory provision is made for the trial of certain crimes (*q*) before courts other than those within the area of whose jurisdiction such crimes were committed, but, in the absence of statutory provision, the common law rule governs the venue.

Locality of a crime.

583. The locality of a crime varies with the nature of the crime. If the crime is an act of omission, the place where the crime is committed is the place where the act which is omitted ought to have been done (*r*). If the crime consists of an act or acts of commission which is or are done in one place, that is the place where the crime is committed (*s*).

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district of the Central Criminal Court, or a city or borough where such borough has a separate court of quarter sessions. The venue is thus laid:—In the case of an indictment found by the grand jury of a county, "County of Worcester to wit," of an assize district, "County of Warwick, Birmingham Division, to wit" (see Order in Council of 26th June, 1884, Stat. R. & O. Rev., VII., 791); in the case of an indictment found at the Central Criminal Court (the district of which for purposes of venue is to be deemed to be one county), "Central Criminal Court to wit" (Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), s. 3); in the case of an indictment found by the grand jury of a city or borough which is a county of itself, "County of the City of Worcester to wit" or "County of the Town of Newcastle-upon-Tyne to wit"; in the case of an indictment found by the grand jury of a borough which is not a county of itself, "Borough of Wolverhampton to wit."

(*p*) Prynne on the Fourth Institute, 92; 1 Hale, P. C. 651, 652; 2 Hale, P. C. 163; *R.* v. *Gough* (1781), 2 Doug. (K. B.) 791; *R.* v. *Weston* (1770), 4 Burr. 2507, at p. 2511.

(*q*) See p. 283, *post.*

(*r*) *R.* v. *Milner* (1846), 2 Car. & Kir. 310. So in the case of an act of commission, such as embezzlement, when there is no evidence of embezzlement except non-accounting, the venue may be laid in the place where the non-accounting occurred; but this does not apply where there is distinct evidence of misappropriation elsewhere, for then the offence is triable in either place (see *R.* v. *Davison and Gordon* (1855), 7 Cox, C. C. 158, *per* ALDERSON, B., at p. 162; *R.* v. *Murdock* (1851), 5 Cox, C. C. 360, C. C. R.; *R.* v. *Taylor* (1803), Russ. & Ry. 63; *R.* v. *Rogers* (1877), 3 Q. B. D. 28, C. C. R.; *R.* v. *Hobson* (1803), Russ. & Ry. 56; *R.* v *Treadgold* (1878), 14 Cox, C. C. 220, C. C. R.

(*s*) Thus, where the charge is one of perjury in swearing a false affidavit, the crime is complete by the act of swearing, and the place where that act is done is the place where the crime is committed. If the affidavit is used in another place, such use is no part of the crime of perjury, but is an independent crime for which the offender may be tried in the place where the affidavit is used; the venue must be laid where the false oath is taken, not where the affidavit is used; the crime is complete, even if no use is made of the affidavit (*R.* v. *Crossley* (1797), 7 Term Rep. 315). If perjury is committed within the limits of a city which is a county of itself on the trial of an issue before a jury of the county at large, the offence is triable before a jury either of the city or of the county at large (*R.* v. *Gough* (1781), 2 Doug. (K. B.) 791; *R.* v. *Jones* (1833), 6 C. & P. 137). The crime of bigamy is committed in the place where the second marriage took place (1 Hale, P. C. 694), although, in order to prove the crime, evidence must be given of the first marriage, which may have been solemnised elsewhere. See further as to the venue in bigamy, Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 57, and p. 284, note (*c*), *post.* As regards forgery, the fact that the accused was seen in the place where the forged document was uttered in company with the utterer is evidence that the forgery took place there and justifies the venue

A criminal enterprise may consist of a continuing act which is done in more places than one or of a series of acts which are done in several places. In such cases, though there is one criminal enterprise, there may be several crimes; and a crime is committed in each place where a complete criminal act is performed, although such act may be only a part of the enterprise (*t*).

Continuing acts.

584. What constitutes a complete criminal act is determined by the nature of the crime. Thus, as regards continuing acts, in the case of sending by post or otherwise a libellous or threatening letter, or a letter to provoke a breach of the peace, a crime is committed, both where the letter is posted or otherwise sent, and also where it is received, and the venue may be laid in either place (*a*).

In obtaining money etc. by false pretences the gist of the offence is the obtaining, and the crime is committed where the money is obtained, and not where the false pretences are made (*b*).

If money obtained by false pretences is sent by letter at the request of the accused, the crime is committed both where the letter is posted and where it is received (*c*).

As regards simple larceny, if property is stolen in one county and

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being laid there (*R. v. Corah* (1827), 2 Russell on Crimes, 6th ed., 658—659; but see *Parkes's Case* (1796), 2 Leach, 775).

(*t*) Many of these cases are provided for by statute (*e.g.*, Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 12), by which if a felony or misdemeanour is begun in one county and completed in another it may be tried in either (*R.* v. *Jones* (1830), 1 Russell on Crimes, 6th ed., 5, and p. 285, *post*); but there are many cases to which the statute is not applicable, *e.g.*, where some of the acts relating to a crime are done out of England (see *R.* v. *Peters* (1886), 16 Q. B. D. 636, C. C. R.; *R.* v. *Ellis*, [1899] 1 Q. B. 230, C. C. R.). In such cases the venue is determined by the rules of the common-law.

(*a*) *R.* v. *Burdett* (1820), 4 B. & Ald. 95; *R.* v. *Girdwood* (1776), 2 East, P. C. 1120; *R.* v. *Esser* (1767), 2 East, P. C. 1125; *R.* v. *Williams* (1810), 2 Camp. 506; *Trial of the Seven Bishops* (1688), 12 State Tr. 183, 354; *R.* v. *Watson* (1808), 1 Camp. 215; *R.* v. *Johnson* (1805), 7 East, 65.

(*b*) *R.* v. *Ellis*, [1899] 1 Q. B. 230, C. C. R.; *R.* v. *Buttery*, cited in *R.* v. *Burdett*, *supra*, at p. 179; and see *R.* v. *Holmes* (1883), 12 Q. B. D. 23, C. C. R.

(*c*) *R.* v. *Jones* (1850), 1 Den. 551; *R.* v. *Leech* (1856), 7 Cox, C. C. 100. But where the charge is that of attempting to obtain money etc. by false pretences, the locality of the crime is, it seems, the place where the false pretences are made. If goods are obtained by false pretences in one county and removed into another, the trial must be in the county where the goods were obtained (*R.* v. *Stanbury* (1862), Le. & Ca. 128). An undischarged bankrupt commits the offence of obtaining credit to the amount of £20 or upwards under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 31, in the place where he obtains goods on credit (*R.* v. *Dawson* (1888), 16 Cox, C. C. 556, C. C. R.). If an undischarged bankrupt living at N., in England, writes to a person in Ireland and orders goods to be sent on credit to N. from Ireland, and the goods are so sent and are received in N., the offence is committed in N. (*R.* v. *Peters*, *supra*; and see *R.* v. *Juby* (1886), 55 L. T. 788, C. C. R.; *R.* v. *Ellis*, *supra*). A defendant by false pretences in letters written in London and sent to Paris induced stockbrokers in Paris to give him credit and to buy stock for him; no scrip or shares were delivered to him, but in some cases the stock was sold at a profit and he received the difference between the prices at which the stock was bought and those at which it was sold; in other cases the stock bought on his account was not sold, and the stockbrokers in Paris had to pay for it; it was held that he had obtained credit in London, and could be tried in the Central Criminal Court (*R.* v. *Hurwitz*, C. C. C. Sessions Papers, November, 1908, 22).

SECT. 4. Venue.

carried by the thief into other counties, the venue may be laid either in the county where he originally stole the goods or in any county into which he takes them *animo furandi*, and this is so even though the removal into one county may be after a considerable interval of time (*d*); but this rule does not apply where the stolen property is taken into a county by the thief after his arrest in the company of and with the consent of the constable who has charge of him (*e*).

The rule that a person who steals property in one county and removes it into another may be tried in the second county only applies to simple larceny, and does not apply to compound larceny, *i.e.*, larceny with some aggravating circumstance, as taking from the house or person (*f*). A person who commits compound larceny in one county and carries the stolen property into another county cannot be convicted of compound larceny in the second county, but may, it seems, be indicted and tried in the second county for simple larceny (*g*).

The offence of receiving stolen property is committed and triable in the place where the property is received (*h*).

The offence of abduction is committed not only in the county in which the woman or girl is originally taken, but also in any county into which she is carried by force (*i*).

A person who in one place fires a shot or throws a missile with criminal intent and kills or injures a person who is in another place commits the crime in the place where the injury is received (*j*).

(*d*) *R.* v. *County* (1816), 2 Russell on Crimes, 6th ed., 285; *Parkin's Case*, (1824), 1 Mood. C. C. 45; *R.* v. *Rogers* (1868), L. R. 1 C. C. R. 136; *Griffith* v. *Taylor* (1876), 2 C. P. D. 194, C. A., at p. 202.

(*e*) *R.* v. *Simmonds* (1834), 1 Mood. C. C. 408. If the nature of property stolen in one place is altered, and the property in its altered state is carried by the thief into another place, the thief is guilty of larceny in the second place as well as in the first, but the indictment if presented in the second place would be differently expressed from an indictment presented in the first place, *e.g.*, if a thief stole a live turkey in one place and carried it to another and killed it there, or stole a brass furnace in one place and carried it to another and broke it into pieces there, the indictment if presented in the first place would allege that he stole a "live turkey" or a "brass furnace," but if presented in the second place that he stole a "dead turkey" or "pieces of brass" (*R.* v. *Edwards* (1822), Russ. & Ry. 497; *R.* v. *Halloway* (1823), 1 C. & P. 127). So, if several jointly steal in the county of A. and then divide the goods, and each afterwards carries his separate share into the county of B., they may be tried for a joint felony in the county of A., but not in the county of B.,; if tried in the county of B., they must be tried for separate felonies (*R.* v. *Barnett* (1818), 2 Russell on Crimes, 6th ed., 284).

(*f*) 4 Bl. Com. 229.

(*g*) *R.* v. *Thomson* (1795), 2 Russell on Crimes, 6th ed., 283; *Thomas's Case* (1794), 2 Leach, 634; *R.* v. *Fenley* (1903), 20 Cox, C. C. 252. Nor does the rule apply to a statutory larceny which is not a larceny at common law. If the original taking is only a statutory felony, the subsequent possession cannot be considered as larceny (*R.* v. *Millar* (1837), 7 C. & P. 665). See as to Post Office offences, p. 644, *post*. The rule does not apply to false pretences (*R.* v. *Stanbury* (1862), Le. & Ca. 128).

(*h*) *R.* v. *Martin* (1849), 1 Den. 398. See, further, as to the venue in cases of receiving, Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 96, and p. 288, *post*.

(*i*) *Fulwood's Case* (1637), Cro. Car. 488; *R.* v. *Gordon* (1804), 3 Russell on Crimes, 6th ed., 255.

(*j*) *R.* v. *Coombes* (1785), 1 Leach, 388; and see *R.* v. *Rogers* (1877), 3 Q. B. D.

Treason.

The offence of high treason is committed in every county in which an overt treasonable act is done, and if several such acts are done in different counties, the venue may be laid in any one of these counties, and evidence at such trial may be given of overt acts in other counties (*k*).

Conspiracy.

Conspiracy may be tried in the place where the conspirators agreed to do the wrongful act which is the object of the conspiracy, but as the place of agreement is often unknown, conspiracy is generally a matter of inference deduced from criminal acts of the accused persons which are done in pursuance of a common criminal purpose, and are often not confined to one place; a charge of conspiracy may consequently be laid in any county where one of these criminal acts is committed; although no act may have been done by some of the accused in that county, yet if all the accused had a common criminal purpose and jointly co-operated in forwarding it in different counties, the venue may be laid in any county in which overt acts are done by some one of them in prosecution of the conspiracy (*l*).

Procuring.

A person who procures the commission of an offence commits the offence in the place where the act is done the commission of which he has procured, although he himself never was in that place (*m*).

Inciting.

If a person incites another to commit an offence, but the offence is not actually committed, the person who incites is guilty of a crime, which is triable, it seems, where the incitement took place (*n*).

SUB-SECT. 2.—*Statutory Provisions.*

Statutory alteration of common law rule.

585. Where the common law rule as to venue is relaxed, and provision is made by statute that a crime may be tried in some county or place other than that in which it was committed, the venue to be laid in the margin of the indictment is the area of jurisdiction of the court in which the indictment is found (*a*).

28, C. C. R., *per* FIELD, J., at p. 34. Cases of this kind are in most instances provided for by statute (see Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 12, and p. 285, *post*). If the shot was fired or the missile thrown but no one was hit, the offence of attempting to do the injury would be committed, it is submitted, in the place where the person was who fired the shot or threw the missile.

(*k*) *Vane's (Sir Henry) Case* (1662), Kel. 14, 15; *Grahme's (Sir Richard) Case* (1691), 12 State Tr. 646, at pp. 726, 740.

(*l*) *R.* v. *Brisac* (1803), 4 East, 164, *per* GROSE, J., at p. 171; *R.* v. *Bowes* (1787), cited 4 East, at p. 171). And *semble*, if a British subject, being abroad, conspires with someone in England to commit a crime in England, the British subject is triable in England, if his fellow-conspirator does any overt act in England in pursuance of the conspiracy (see *R.* v. *Jameson*, [1896] 2 Q. B. 425, at p. 431; Greaves, Criminal Law Consolidation Acts, 2nd ed., p. 37).

(*m*) *R.* v. *Johnson* (1805), 7 East, 65; *R.* v. *Brisac* (1803), 4 East, 164; *R.* v. *Bull* (1845), 1 Cox, C. C. 281; but, as to accessories, see now Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 7, and p. 285, *post*).

(*n*) *R.* v. *Higgins* (1801), 2 East, 5; *R.* v. *Gregory* (1867), L. R. 1 C. C. R. 77. The rules as to venue are much less strict in the case of misdemeanours than in the case of felonies (*R.* v. *Burdett* (1820), 4 B. & Ald. 95, *per* ABBOTT, C.J., at p. 171; *R.* v. *Ellis*, [1899] 1 Q. B. 230, C. C. R., *per* BRUCE, J., at p. 242).

(*a*) See *R.* v. *Mitchell* (1842), 2 Q. B. 636; but see Counties of Cities Act, 1798 (38 Geo. 3, c. 52), s. 3, and p. 286, *post*.

SECT. 4. Venue.

For the trial of some crimes the venue may be laid in any county in England (*b*).

In the case of certain other crimes the venue may be laid either in the county in which they are committed, if they are committed in England, or in the county or place in which the accused person is apprehended, or in custody (*c*), or in which such person is (*d*).

(*b*) Namely, the offence of violently assaulting or resisting officers of excise, if the offence is committed in England (Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), s. 43); offences against the Customs Acts, if committed in England, and if the indictment is preferred under the direction of the Commissioners of Customs (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 258); offences against the Incitement to Mutiny Act, 1797 (37 Geo. 3, c. 70) (see s. 2); offences punishable as perjury under the Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23) (see s. 15); burning the King's ships etc. either in the United Kingdom or in any British possession (Dockyards etc. Protection Act, 1772 (12 Geo. 3, c. 24)). An offence against the Unlawful Oaths Act, 1797 (37 Geo. 3, c. 123) (see s. 6); or the Unlawful Oaths Act, 1812 (52 Geo. 3, c. 104) (see s. 7), whether committed on the high seas or out of England, may be tried before any court of oyer and terminer or gaol delivery in any county of England, as if the offence had been therein committed.

(*c*) Namely, bigamy (Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 57; *R.* v. *Smith* (1858), 1 F. & F. 36; *R.* v. *Whiley* (1840), 1 Car. & Kir. 150, C. C. R.). Offences against the Post Office Act, 1908 (8 Edw. 7, c. 48), s. 72; see title POST OFFICE. Embezzlement of public money by any person employed in the public service or in the police (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 70). Offences against the Forgery Act, 1861 (24 & 25 Vict. c. 98), or the offences of offering, uttering, disposing of, or altering any matter with knowledge that it is forged or altered, or being an accessory to such an offence (*ibid.*, s. 41); *R.* v. *James* (1836), 7 C. & P. 553; *R.* v. *Smythies* (1849), 1 Den. 498). Murder or manslaughter by a British subject of any person on land out of the United Kingdom or being accessory to such murder or manslaughter (Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 9). Offences committed on the high seas and other places within the jurisdiction of the Admiralty (Admiralty Offences Act, 1844 (7 & 8 Vict. c. 2), ss. 1 & 2; see Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 687; and as to the Central Criminal Court, see Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), s. 22; Admiralty Offences Act, 1844 (7 & 8 Vict. c. 2), s. 4; and Central Criminal Court (Prisons) Act, 1881 (44 & 45 Vict. c. 64), s. 2 (2)). All indictable offences mentioned in the Larceny Act, 1861 (24 & 25 Vict. c. 96), in the Malicious Injuries to Property Act, 1861 (24 & 25 Vict. c. 97), in the Forgery Act, 1861 (24 & 25 Vict. c. 98), in the Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), and in the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), if such offences are committed within the jurisdiction of the Admiralty (see Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 115; Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 72; Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 50; Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 36; Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 68). Offences committed out of the King's dominions by a master etc. of a British ship or by a person who within three months previously has been employed in such a capacity (see Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 687). Offences committed out of the United Kingdom against the Explosive Substances Act, 1883 (46 Vict. c. 3), s. 7). Offences against the Commissioners for Oaths Act, 1889 (52 Vict. c. 10), s. 9, whether committed within or without the King's dominions. If a person who has been sentenced to penal servitude commits the offence of being at large before the expiration of his sentence, he is triable either in the county or place in which he is apprehended or in which he was sentenced (Transportation Act, 1824 (5 Geo. 4, c. 84), s. 22; Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), s. 3). An offence under the Pentonville Prison Act, 1842 (5 & 6 Vict. c. 29), is triable before justices of oyer and terminer either at the Central Criminal Court or in the county in

(*d*) For note (*d*) see p. 285.

SECT. 4. Venue.

Crimes committed on boundaries of counties.

586. The venue of an offence committed on the boundary or boundaries of two or more counties or within the distance of 500 yards of any such boundary, or begun in one county and completed in another, may be laid in any of these counties in the same manner as if it had been actually and wholly committed there (*e*).

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which the offender is taken (s. 28). An accessory either before or after the fact to a felony wholly committed in England may be tried by any court which has jurisdiction to try the principal felony or any felonies committed in any county or place in which the act by which the person becomes an accessory is committed; in every other case the accessory may be tried by any court which has jurisdiction to try the principal felony or any felonies committed in any county or place in which the accessory is apprehended or in custody, whether the principal felony has been committed on the sea or on the land, or begun on the sea and completed on the land, or begun on the land and completed on the sea, and whether within or without the King's dominions, or partly within and partly without the King's dominions (Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 7; see *R.* v. *Wallace* (1841), Car. & M. 200). If a person within the jurisdiction of the Admiralty becomes accessory to any felony, "the venue shall be the same as if the offence had been committed in the county or place in which he is indicted" (Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 9). If a statute authorises the trial of a crime in a county where the accused is in custody, and he is committed to take his trial in any particular county, but is allowed out on bail, he may be tried in that county, though he is not in confinement, till he surrenders in discharge of his bail (*R.* v. *Smythies* (1849), 1 Den. 498).

(*d*) An offence in connection with the slave trade may be tried either where the offence was committed or in Middlesex, or in any place in which the person guilty of the offence may for the time being be; where any such offence is commenced at one place and completed at another, the offence may be tried at either place. If a person being in one place is accessory to or aids and abets any such offence committed in another place, he may be tried either where the offence was actually committed or where the offender was at the time of his being accessory, aiding or abetting (Slave Trade Act, 1873 (36 & 37 Vict. c. 88), s. 26). Any offence under the Merchant Shipping Act, 1894 (57 & 38 Vict. c. 60), for the purpose of giving jurisdiction is deemed to have been committed either in the place in which it was actually committed or in any place in which the offender may be (s. 684); these provisions apply to a prosecution under the Behring Sea Award Act, 1894 (57 Vict. c. 2), s. 1 (2), (5), and Sched. II. Similar provisions are to be found in the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), ss. 16, 17. It is stated in some authorities that an indictment for extortion may be laid in any county under 31 Eliz. c. 5, s. 4 (see 2 Starkie, Criminal Pleading, 2nd ed., 611, n.; but there was a doubt whether s. 4 applied to indictments (2 Chitty, Criminal Law, 293, n.); ss. 2, 3, 4, and 6 of the statute were repealed as to civil proceedings by the Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59), but remain in force as to criminal pleadings. The proper course, it seems, would be to lay the indictment for extortion in the county where any act of extortion was committed. If a person commits an offence against the Customs Acts in any place on the water not being within any county of the United Kingdom, or if the revenue officers have any doubt whether such place is within the boundaries of any such county, he is triable in the place in which the offence was actually committed or where the offender may be or be brought (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 229). An offence committed by a British subject on a British ship on the high seas, or in any foreign port or harbour or on board any foreign ship to which he does not belong, or an offence committed by an alien on board any British ship on the high seas, may be tried before any court of justice in the King's dominions, if the offender is found within the jurisdiction of the court, and if the court would have had cognisance of the offence, had it been committed within the limits of its ordinary jurisdiction (Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 686; see *R.* v. *Lopez* (1858), Dears. & B. 525).

(*e*) Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 12. One effect of the Act is to give adjoining counties concurrent jurisdiction over an area of 1000 yards through the centre of which runs the boundary. The Act applies to all offences,

SECT. 4. **Venue.**

Counties of cities.

587. An indictment for an offence committed within the county of a city or town corporate, except in London, Westminster, or the borough of Southwark, may be preferred to the grand jury of the next adjoining county at the sessions of oyer and terminer or gaol delivery and may be tried there (*f*). If an indictment for such an offence has been found by the grand jury of the county of a city or town, any court of oyer and terminer holden for such county of a

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even to those, *e.g.*, burglary, which are local in their character (*R.* v. *Ruck* (1829), 2 Russell on Crimes, 6th ed., 46). The offence may be laid and tried in either county, but where it is laid, there it must be tried; it cannot be laid in one county and tried in another (*R.* v. *Mitchell* (1842), 2 Q. B. 636). The distance of 500 yards is to be measured geometrically from the place where the offence is committed to the nearest point of the boundary, and not along the road (*R.* v. *Wood* (1841), 5 Jur. 225); the distance, it seems, is to be measured on a map without regard to the curvature or inequalities of the surface of the earth (see *Mouflet* v. *Cole* (1872), 42 L. J. (EX.) 8, Ex. Ch.; and compare Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 231; Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 34). The Act does not apply to trials in limited jurisdictions (*e.g.*, in boroughs which are not counties of themselves), but only to counties; thus, an offence committed within 500 yards of the boundary of a borough which is not a county of itself cannot be tried at the quarter sessions for the borough (*R.* v. *Welsh* (1827), 1 Mood. C. C. 175). The words "begun in one county and completed in another" do not make it necessary that there should be active and continuing agency in the person who commits the offence; thus, where a blow was struck in the county of Worcester, and the person struck died in the city of Worcester, which is a county of itself, it was held that the offender could be tried for manslaughter in the city (*R.* v. *Jones* (1830), 1 Russell on Crimes, 6th ed., 5). As regards detached parts of a county which are surrounded in whole or in part by another county, the Counties (Detached Parts) Act, 1839 (2 & 3 Vict. c. 82), s. 1, gives the justices of the county which surrounds the detached part jurisdiction to act over that part, and the effect is that a crime committed in such a detached part may be tried in the county which surrounds it or in the county to which the detached part belongs (*R.* v. *Loader* (1840), 1 Russell on Crimes, 6th ed., 7, note (w); Dickinson's Quarter Sessions, 6th ed., 209). As to the transference of outlying parts of a county to another county, see County Police Act, 1840 (3 & 4 Vict. c. 88), s. 2, as explained by 21 & 22 Vict. c. 68, s. 2 (repealed by Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19)).

(*f*) Counties of Cities Act, 1798 (38 Geo. 3, c. 52), ss. 2, 10; Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 188, Sched. VI. The venue in cases tried under the Counties of Cities Act, 1798 (38 Geo. 3, c. 52), is to be deemed to be the county of the city or town, and this may be stated in the margin of the indictment, with or without the name of the county in which the offender is to be tried, or may be stated in the body of the indictment (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 23; this enactment provides for the difficulty that arose from the conflicting decisions of *R.* v. *Mellor* (1808), Russ. & Ry. 144, and *R.* v. *Goff* (1810), Russ. & Ry. 179). A county of a city or town is a city or town which has been constituted a county of itself, and is not comprised in any other county, and is governed by its own sheriffs and other magistrates so that no officer of the county at large has power to intermeddle therein (1 Bl. Com. 119; *The Gloucester Case* (1593), Poph. 16; *R.* v. *Gough* (1781), 2 Doug. (K. B.) 791). The following are the counties of cities:—Bristol, Canterbury, Chester, Exeter, Gloucester, Lichfield, Lincoln, Norwich, Worcester, York, Kingston-upon-Hull, and Newcastle-upon-Tyne. The following are the counties of towns:—Berwick-upon-Tweed, Carmarthen, Haverfordwest, Nottingham, Poole, and Southampton (see stat. 5 & 6 Will. 4, c. 76), ss. 61, 109, and 5 & 6 Vict. c. 110, s. 1). Separate commissions of assize are issued and executed for the counties of the cities or towns of Newcastle-upon-Tyne, Exeter, Bristol, Norwich, Gloucester, Lincoln, Nottingham, Worcester, York, Haverfordwest, and Carmarthen, and the borough of Leicester (Archbold's Criminal Pleading, 23rd ed., p. 45). If for five years next before the passing of the Criminal Justice Administration

city or town may order the indictment to be tried by a jury of the next adjoining county (*g*).

Uttering counterfeit coin in two counties.

588. If a person tenders, utters, or puts off any counterfeit coin in any county or jurisdiction, and also tenders, utters, or puts off any other counterfeit coin in any other county or jurisdiction on the same day or within ten days next ensuing, or if two or more persons act in concert in different counties or jurisdictions to commit any offence against the Coinage Offences Act, 1861 (*h*), the venue may be laid in any one of those counties or jurisdictions (*i*).

Crimes committed on journeys.

589. The venue of an offence committed on any person, or in respect of any property, in or upon any coach, waggon, cart, or other carriage employed on any journey or on board any vessel employed on any voyage or journey upon any navigable river, canal, or inland navigation, may be laid in any county through any part whereof such coach, waggon, cart, carriage, or vessel passes in the course of the journey or voyage during which the offence is committed, in the same manner as if it had been actually committed in such county (*k*).

Act, 1851, a commission of oyer and terminer was not directed to be executed within any county of a city or county of a town then until such commission shall be directed to be executed there, indictments for offences committed therein may be preferred and tried in the adjoining county (Criminal Justice Administration Act, 1851 (14 & 15 Vict. c. 55), s. 19; Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 188). For this purpose the next adjoining county to Berwick-upon-Tweed and Newcastle-upon-Tyne is Northumberland; to Bristol, Gloucestershire; to Chester, Cheshire; to Exeter, Devonshire; to Kingston-upon-Hull, Yorkshire (Municipal Corporations Act, 1882, Sched. VI.). As to Bristol, see *R.* v. *Holden* (1838), 8 C. & P. 606. As to alteration of boundaries, see *R.* v. *Piller* (1836), 7 C. & P. 337; *R.* v. *Gloucestershire Justices* (1836), 4 Ad. & El. 689; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 54.

(*g*) Counties of Cities Act, 1798 (38 Geo. 3, c. 52), s. 3.

(*h*) 24 & 25 Vict. c. 99.

(*i*) *Ibid.*, s. 28.

(*k*) Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 13. If the side, centre, or other part of any highway, or if the side, bank, centre, or other part of any such river, canal, or navigation, constitutes the boundary of any two counties, the offence is triable in either of the counties through or adjoining to or by the boundary of any part whereof the coach, waggon, cart, carriage, or vessel passes in the course of the journey during which the offence is committed (*ibid.*; compare the Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69), s. 21). The Act applies to a journey by railway (*R.* v. *French* (1859), 8 Cox, C. C. 252); it is not confined to the carriages etc. of common carriers or to public conveyances, but applies to all carriages etc. (*R.* v. *Sharpe* (1854), Dears. C. C. 415). Where an assault was committed in a railway carriage in the county of A., which is outside the jurisdiction of the Central Criminal Court, and the person assaulted afterwards left the carriage and journeyed in another carriage on the same train to a place in the county of B., which is within the jurisdiction of the Central Criminal Court, it was held that the offence was triable at the Central Criminal Court (*R.* v. *French* (1859), 8 Cox, C. C. 252). Where the guard of a coach, who had been intrusted with a parcel containing banknotes and sovereigns, carried the parcel into an outhouse, while the coach was stopping at a place in the county of G., and there took the sovereigns out of the parcel and appropriated them, and the coach afterwards passed through the county of H., it was held that the act of stealing was not "in or upon the coach," that the statute did not apply,

SECT. 4. Venue.

Post Office offences.

590. Where an offence is committed in respect of a mail, mailbag, postal packet, or money order, or any chattel, money, or valuable security sent by the post, the venue may be laid in any county or place in which the offender is apprehended or in custody, and also in any county or place through which or through any part whereof the mail, mailbag, postal packet, money order, chattel, money or security passed in due course of conveyance by post (*l*).

Stealing from wreck.

591. The offence of plundering or stealing any part of any ship in distress or wrecked, stranded, or cast ashore, or any goods etc. belonging to such ship, may be tried either in the county or place in which the offence was committed or in any county or place next adjoining (*m*).

Receipt of stolen property.

592. The receiver of a chattel etc. knowing that it has been feloniously or unlawfully stolen or obtained by false pretences, whether he is charged as an accessory after the fact or with a substantive felony or with a misdemeanour only, may be indicted in the county or place in which he may have had the property in his possession, or in any county or place in which the party guilty of the principal felony or misdemeanour may be indicted, in the same manner as in the county where the receiver actually received the property (*n*).

593. A person having in his possession in any part of the United Kingdom any property which he has stolen or otherwise feloniously taken in any other part of the United Kingdom may be indicted for larceny in that part of the United Kingdom in which he has such property as well as in the part where he stole it. If a person in any part of the United Kingdom receives or has any property which has been stolen or otherwise feloniously taken in any other part of the United Kingdom with knowledge that it was stolen etc., he may be indicted for the offence of receiving in that part of the United Kingdom in which he receives or has such property, in the same manner as if it had been originally taken or stolen in that part, or the venue may be laid in the part where the principal thief may be tried (*o*).

594. The venue of the offence (*p*) of unlawfully receiving or having possession of any property stolen out of the United Kingdom

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that the guard could not be tried in H., and that the proper venue was the county of G. (*Sharpe's Case* (1836), 2 Lew. C. C. 233; *sed quære*, see *R.* v. *Pierce* (1852), 6 Cox, C. C. 117).

(*l*) Post Office Act, 1908 (8 Edw. 7, c. 48), s. 72 (1). When the offence is committed on any highway, harbour, canal, river, arm of the sea, or other water, constituting the boundary of two or more counties or places, it may be tried in any of the said counties or places (Post Office Act, 1908 (8 Edw. 7, c. 48), s. 72 (2)). The offence of being accessory to or of aiding or abetting an offence against the Act may be tried in any county or place in which the last-mentioned offence may be tried, *ibid.*, s. 72 (3).

(*m*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 64.

(*n*) *Ibid.*, s. 96.

(*o*) *Ibid.*, ss. 96 and 114.

(*p*) This offence was created by the Larceny Act, 1896 (59 & 60 Vict. 52).

with knowledge that it was stolen may be laid in any county or place in which the accused has or has had the property (*q*).

Death in one place caused by criminal act in another place.

595. If a person is feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of England or Ireland, and dies of such stroke etc. in England or Ireland, or, being feloniously stricken etc. in England or Ireland, dies of the same at sea or at any place out of England or Ireland, the offender, whether principal or accessory, may be indicted in the county or place in England or Ireland in which the death, stroke, poisoning, or hurt happened (*r*).

Offences triable in King's Bench Division.

596. Indictments for high treason or misprision of treason committed out of England, and for oppressions committed out of England by colonial governors, are triable in the King's Bench Division of the High Court of Justice or by special commission in such county as the King may appoint (*s*).

Offences by the Governor-General of India and other persons in certain offices in India, and by persons in the public service in other possessions of the Crown outside the United Kingdom, may be tried in the King's Bench Division of the High Court of Justice (*t*).

An offence under the Official Secrets Act, 1889 (*a*), if alleged to have been committed out of the United Kingdom, is triable in the King's Bench Division of the High Court of Justice or at the Central Criminal Court (*b*).

The offence of wilfully neglecting or delaying to deliver or transmit writs for the election of members of Parliament is apparently only triable in the King's Bench Division of the High Court of Justice (*c*).

Trial of soldiers for murder etc. at Central Criminal Court.

597. If a person who is subject to the Mutiny Act for the time being in force is committed to take his trial for any murder or

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(*q*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 1 (1).

(*r*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 10. See *R.* v. *Coombes* (1785), 1 Leach, 388. This provision does not apply to a foreigner who causes the death of another person by an act done outside the jurisdiction of the King; *R.* v. *Lewis* (1857), Dears. & B. 182; *R.* v. *Jameson*, [1896] 2 Q. B. 425, *per* Lord RUSSELL OF KILLOWEN, C.J., at p. 430.

(*s*) Stat. (1543) 35 Hen. 8, c. 2, s. 1; stat. (1551) 5 & 6 Edw. 6, c. 11, s. 4 (see p. 276, *ante*); stat. (1698) 11 Will. 3, c. 12. As to treasons committed at sea within the Admiralty jurisdiction, see p. 274, *ante*; Offences at Sea Act, 1536 (28 Hen. 8, c. 15). For a modern instance of a trial in the High Court for treasons committed abroad, see *R.* v. *Lynch*, [1903] 1 K. B. 444.

(*t*) East India Company Act, 1772 (13 Geo. 3, c. 63), s. 39; Criminal Jurisdiction Act, 1802 (42 Geo. 3, c. 85), s. 1. These Acts relate to prosecutions for criminal, oppressive and fraudulent acts committed by persons in public employment abroad in the exercise of their employments, but do not extend to felonies (*R.* v. *Shawe* (1816), 5 M. & S. 403). For instances of prosecutions under these statutes, see *R.* v. *Picton* (1812), 30 State Tr. 225; *R.* v. *Jones* (1806), 8 East, 31; *R.* v. *Eyre* (1868), L. R. 3 Q. B. 487; *R.* v. *Eyre* (1868), reported by W. F. Finlason, 33; *R.* v. *Turner* (1889), 24 L. J. 466, 469, 479, 493.

(*a*) 52 & 53 Vict. c. 52.

(*b*) *Ibid.*, s. 6.

(*c*) Parliamentary Writs Act, 1813 (53 Geo. 3, c. 89), s. 6; and see title ELECTIONS.

SECT. 4. Venue

manslaughter of a person also subject to that Act committed at any place in England and out of the jurisdiction of the Central Criminal Court, the King's Bench Division may, upon the application of the Secretary of State for War, order that the prisoner should be indicted and tried at the Central Criminal Court, and thereupon he may be tried there, as if the murder or manslaughter had been committed within the jurisdiction of the Central Criminal Court (*d*).

Perjury before a naval court-martial, wherever committed, is triable in England (*e*).

Indictment tried where venue laid.

Change of venue.

598. If the venue for the trial of a crime is laid in a particular county or place, the indictment must in general be tried there; the venue cannot be laid in one county or place and tried in another (*f*). But the King's Bench Division of the High Court of Justice has power to change the venue and to order the trial to take place in any county or jurisdiction in the realm (*g*).

Part III.—Proceedings Preliminary to Indictment.

SECT. 1.—*Securing Attendance of Accused Person.*

SUB-SECT. 1.—*Summonses and Warrants.*

Commencement of criminal proceedings.

599. The first step in the ordinary course of criminal procedure is to bring a person charged with a crime before justices of the peace in order that the charge may be investigated.

Summonses and warrants.

The attendance of an accused person before justices is secured either by summons or by arrest, either under or without a warrant (*h*). Summonses and warrants of arrest are issued by a justice on an information being laid before him. A warrant of

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(*d*) Jurisdiction in Homicides Act, 1862 (25 & 26 Vict. c. 65), ss. 1, 3.

(*e*) Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 67. There is no provision as to the venue, if the perjury is committed out of England; naval courts-martial are under this Act held on board a man-of-war (see *ibid.*, s. 59), and perjury at a court so held is triable according to the rules relating to crimes committed within the Admiralty jurisdiction; see p. 273, *ante*.

(*f*) See *R.* v. *Mitchell* (1842), 2 Q. B. 636, and Counties of Cities Act, 1798 (38 Geo. 3, c. 52), s. 3.

(*g*) See p. 350, *post*.

(*h*) For the procedure in reference to summonses and arrests with regard to an indictable offence, see the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), ss. 1, 2. Summonses, warrants, and arrests are mere machinery for securing the attendance of an accused person. The invalidity of any of these preliminary steps will not affect the jurisdiction of justices, if the accused person appears and the charge is one which the justices have power to investigate (*R.* v. *Hughes* (1870), 4 Q. B. D. 614, C. C. R.).

arrest may issue on a summons being disobeyed, or may issue in the first instance.

A summons is an order in writing, signed by a justice and directed to an accused person requiring him to attend before a justice or justices to answer a criminal charge (*i*).

A warrant of arrest is an order, also in writing under the hand and seal of a justice or other person in authority, addressed to a police constable by name, or by the name of his office, and to all other peace officers in a certain area, commanding him or them to arrest an accused person and bring him before the justices sitting in a specified place, to answer the charge which is referred to in the warrant (*k*).

Jurisdiction of justices to issue summonses etc.

600. Summonses or warrants may be issued by a justice of the peace for any county, city, borough or place in England or Wales, when an information has been laid before such justice that any

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(*i*) As to the form, see Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), Schedule, Form C. It is served by a constable or other peace officer upon the party to whom it is directed by delivering it to such party personally, or if he cannot conveniently be met with, then by leaving it with some person for him at his last or most usual place of abode (*ibid.*, s. 9).

(*k*) As to the form of a warrant in the case of an indictable offence, see Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), Schedule, Form B. Warrants, besides being issued by justices, may be granted in the case of treason by a Secretary of State (*R.* v. *Kendal* (1695), 1 Ld. Raym. 65; *R.* v. *Despard* (1798), 7 Term Rep. 736; see *Leach* v. *Money* (1765), 19 State Tr. 1001). Any judge of the King's Bench Division of the High Court of Justice may issue a warrant for the arrest of a person against whom a charge is made on oath of felony (1 Chitty, Criminal Law, 36; and see Bail Bonds Act, 1808 (48 Geo. 3, c. 58), s. 1). Under s. 380 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), a warrant may be issued by a superintendent (*i.e.*, a shipping master or other officer of a local marine board; see *ibid.*, ss. 246 and 742) or by the principal Board of Trade officer at a port or district or by his deputy, on the information made, if the officer so require, on oath, for the apprehension of any seaman or apprentice charged with the offence of desertion, absence without leave, wilful disobedience, continued breach of duty, or unlawful combination. A warrant must in general direct the arrest of a particular person by name, or by description, if his name is unknown. But a justice of the peace may, at common law, issue a search warrant authorising a search in any house etc. for stolen goods and the arrest of any person found in possession of such goods (see p. 309, *post*). In other cases a general warrant (*e.g.*, a warrant to seize the "authors, printers and publishers" of a certain specified libel) is bad at common law (*Leach* v. *Money* (1765), 19 State Tr. 1001, at p. 1027; *Entick* v. *Carrington* (1765), 19 State Tr. 1029, 1074). Exceptional powers are given by statute authorising the arrest of an indefinite number of persons found in gaming houses (see Unlawful Games Act, 1542 (33 Hen. 8, c. 9), s. 9; Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 48; Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 6; Betting Act, 1853 (16 & 17 Vict. c. 119), s. 11; see *Murphy* v. *Arrow*, [1897] 2 Q. B. 527), in unlicensed theatres and other places of public entertainment (Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 2; Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 46); in places used for cockfighting etc. (Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 47). Justices are also authorised by a number of statutes to issue search warrants in addition to those which they may issue at common law (see p. 310, *post*). A warrant of commitment (*i.e.*, a justices' order committing an accused person to prison to take his trial for an indictable offence) is made out, when the preliminary examination is concluded and the justices consider that a *primâ facie* case has been established; see p. 322, *post*. As to bench warrants see p. 351, *post*.

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person has committed, or is suspected to have committed, any indictable offence within the limits of the jurisdiction of such justice, or that any person guilty or suspected of having committed any such crime outside such jurisdiction is residing or being, or suspected to reside or be, within such jurisdiction (*l*).

Information.

601. A warrant cannot issue unless there is an information in writing and on oath. A summons may be issued on an oral and unsworn information (*m*).

Informer.

Generally speaking, any person may be the informer and may make the charge before the justice, except where there is statutory provision limiting the power of making the charge to certain persons, or making the consent or order of some person a condition precedent to the institution of the proceedings (*n*).

Attorney-General.

602. It is the duty of the Attorney-General to institute prosecutions for crimes which have a tendency to disturb the peace of the State or to endanger the Government; and no information at the suit of anyone but the Attorney-General will be granted by the King's Bench Division of the High Court of Justice for such an offence (*o*).

Director of Public Prosecutions.

603. It is the duty of the Director of Public Prosecutions, under the superintendence of the Attorney-General, to institute, undertake or carry on such criminal proceedings, and to give such advice and assistance to chief officers of police, clerks to justices and other persons, whether officers or not, concerned in any criminal proceeding, respecting the conduct of that proceeding, as may be for the time being prescribed by regulations under the Prosecution of Offences Act, 1879 (*p*), or may be directed in a special case by the Attorney-General. The regulations under that Act provide for the Director of Public Prosecutions taking action in cases of importance or difficulty, or in which special circumstances or the refusal or failure of a person to proceed with a prosecution appear to render the action of such Director necessary to secure the due prosecution of an offender (*q*).

(*l*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 1. As to a warrant to apprehend a person for offences committed on the high seas or abroad, see *ibid.*, s. 2, and Schedule, Form E; and *R.* v. *Eyre* (1868), L. R. 3 Q. B. 487. As to a warrant when an indictment has been found against a person not in custody, see *ibid.*, s. 3, and Sched. G. As to the procedure when the offence for which a person is brought before a justice was committed outside his jurisdiction, see *ibid.*, s. 22.

(*m*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 8; see *O'Brien* v. *Brabner* (1885), 49 J. P. 227.

(*n*) *R.* v. *Kennedy* (1902), 86 L. T. 753; *R.* v. *Granatelli* (1849), 7 State Tr. (N. S.) 979. See p. 293, *post*.

(*o*) *R.* v. *Langley, Ex parte Crawshay* (1860), 8 Cox, C. C. 35(

(*p*) 42 & 43 Vict. c. 22.

(*q*) *Ibid.*, s. 2; see also Prosecution of Offences Act, 1884 (47 & 48 Vict. c. 58), and Prosecution of Offences Act, 1908 (8 Edw. 7, c. 3). Regulations under the Acts of 1879 and 1884 were made 25th January, 1886 (see Douglas, Summary Procedure, 8th ed., p. 485).

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Right of any person to initiate criminal proceedings.

604. There are some statutes which require that certain criminal proceedings should be undertaken by particular persons, or only with the consent of particular persons, but in the absence of statutory provisions to the contrary any person may of his own initiative, and without any preliminary consent, institute criminal proceedings with a view to an indictment (*r*).

Discretion of justices as to summonses etc.

605. If application is made to a justice to issue a summons or a warrant of arrest, he must exercise a judicial discretion in deciding to grant or refuse it. If he declines jurisdiction, or refuses to grant a summons for a reason which is bad in law, a rule may be granted by the King's Bench Division of the High Court of Justice

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(*r*) In many statutes relating to proceedings before a court of summary jurisdiction there are provisions defining what person should be the informant (see, *e.g.*, Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 42; and *Nicholson* v. *Booth* (1888), 57 L. J. (M. C.) 43; *Pickering* v. *Willoughby*, [1907] 2 K. B. 296; *Tarry* v. *Newman* (1846), 15 M. & W. 645; *Smith* v. *Dear* (1903), 20 Cox, C. C. 458). In a few cases of indictable offences the power of instituting proceedings is limited to certain persons or made subject to the consent of certain persons. For instance, all indictments for any offences under the Customs Acts must be preferred in the name of the Attorney-General or of some officer of Customs or Inland Revenue (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 255. The consent of the Attorney-General is required for a prosecution under the Official Secrets Act, 1889 (52 & 53 Vict. c. 52) (see *ibid.*, s. 7 (1)), the Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict. c. 69) (see *ibid.*, s. 4), the Prevention of Corruption Act, 1906 (6 Edw. 7, c. 34) (see *ibid.*, s. 2 (1)), the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35) (see *ibid.*, s. 24), the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 80, the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 69, the Punishment of Incest Act, 1908 (8 Edw. 7, c. 45), unless it is commenced by or on behalf of the Director of Public Prosecutions (see *ibid.*, s. 6). Where an election court or election commissioners have reported that persons have been guilty of any corrupt practice, it rests with the Attorney-General to decide whether he should or should not institute or direct a prosecution; but it seems that there is nothing to prevent a private person from instituting a prosecution if he wishes (Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 60); as to prosecutions by the Director of Public Prosecutions for corrupt or illegal practices, see *ibid.*, ss. 45, 57, and as to prosecutions by the returning officer at an election for personation, see Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 24, and Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), ss. 86, 87. See title ELECTIONS. If any person is charged before a justice with any crime under the Explosive Substances Act, 1883 (46 Vict. c. 3), no further proceeding is to be taken against such person without the consent of the Attorney-General, except for the purpose of securing the safe custody of such person by remand or otherwise (*ibid.*, s. 7). See title EXPLOSIVES. A prosecution under the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), s. 2, of a person who is not a subject of the King cannot be instituted in England except with the consent of a Secretary of State (*ibid.*, s. 3). No criminal prosecution for libel can be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published in such newspaper without the order of a judge in chambers being first obtained (Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), s. 8; and see title LIBEL AND SLANDER). A prosecution of a bankrupt for an offence under the Debtors Act, 1869 (32 & 33 Vict. c. 62), or under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), may be ordered by a court exercising bankruptcy jurisdiction, and in such a case the Director of Public Prosecutions is to institute and carry on the prosecution (Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 16; Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 166); but there is nothing which makes the order of such a court a condition precedent to the institution of proceedings or to prevent anyone from instituting them (*R.* v. *Thomas* (1869),

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to compel him to hear and determine the matter (*s*). If he exercises his discretion and does so properly, the court will not grant a mandamus to hear and determine the matter (*a*). If he refuses to grant a summons or warrant and assigns several reasons for doing so, and some of these reasons are bad in law, but others are good, the court will not grant a mandamus (*b*).

No limitation of crime in general for criminal proceedings.

606. Criminal prosecutions, except where there are statutory provisions to the contrary (*c*), may be commenced at any time after

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11 Cox, C. C. 535), and a private person instituting such a prosecution without the order of a judge may now obtain an order for the payment of his costs (Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 10, repealing s. 17 of Debtors Act, 1869 (32 & 33 Vict. c. 62)). If the office of Attorney-General is vacant, the Solicitor-General has, it seems, the powers of the Attorney-General (*R.* v. *Wilkes* (1770), 4 Burr. 2527, at p. 2554). In cases of offences under s. 26 of the Offences against the Person Act, 1861, and of inflicting bodily injury on a person under sixteen, if the justices before whom a complaint of the offences is heard certify that it is necessary for the purposes of public justice that the prosecution should be conducted by the guardians of the poor or overseers of the place where the offence is alleged to have been committed, the guardians, or, if there are no guardians, the overseers, must conduct the prosecution (*ibid.*, s. 73).

(*s*) *R.* v. *Byrde* (1890), 60 L. J. (M. C.) 17. As to mandamus, see title CROWN PRACTICE.

(*a*) *R.* v. *Bros* (1901), 85 L. T. 581; *R.* v. *Kennedy* (1902), 86 L. T. 753.

(*b*) *R.* v. *Kennedy*, *supra*.

(*c*) Various periods of limitation after the offence is committed are provided by different statutes for the commencement of proceedings, *e.g.*: (1) Three years in the case of treason (except the treason of designing, endeavouring or attempting any assassination on the body of the King by poison or otherwise), if it is committed in any part of the United Kingdom (Treason Act, 1695 (7 & 8 Will. 3, c. 3), s. 5; Treason Act, 1708 (7 Ann. c. 21); Treason (Ireland) Act, 1821 (1 & 2 Geo. 4, c. 24); Fost. 249; falsely pretending to be in holy orders and solemnising matrimony according to the rites of the Church of England (Marriage Act, 1823 (4 Geo. 4, c. 76), s. 21); offences against the Customs Acts (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 257; see *R.* v. *Thompson* (1851), 16 Q. B. 832); offences against the Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), s. 46, or against the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 15 (there is an alternative period of limitation of one year after the discovery of the offence by the prosecution, if that period expires before the expiration of three years from the commission of the offence (*ibid.*)). (2) Two years in the case of all indictments under any penal statute whereby the forfeiture is limited to the King (stat. 31 Eliz. c. 5, s. 5), unless the statute prescribes a different period. (3) Eighteen months in the case of a prosecution for perjury under the Marriage Act, 1840 (3 & 4 Vict. c. 72), from the solemnisation of the marriage for the procuring of which the false declaration punishable under that Act as perjury was made (*ibid.*, s. 4). (4) One year in the case of offences against the Riot Act, 1714 (1 Geo. 1, stat. 2, c. 5) (*ibid.*, s. 8), or the Shipping Offences Act, 1793 (33 Geo. 3, c. 67), s. 8; offences punishable upon indictment or otherwise than upon summary conviction under the Night Poaching Act, 1828 (9 Geo. 4, c. 69) (*ibid.*, s. 4); offences under the Corrupt Practices Prevention Acts, *i.e.*, the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), the Corrupt Practices Prevention Act, 1863 (26 & 27 Vict. c. 29), the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), the Ballot Act, 1872 (35 & 36 Vict. c. 33), Part III., the Parliamentary Elections and Corrupt Practices Act, 1879 (42 & 43 Vict. c. 75), the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), ss. 11, 49, 50, or the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51); if such an offence was committed in reference to an election with respect to which an inquiry is held by election commissioners, the period of limitation is one year after the offence

the commission of the offence (*d*). A prosecution is commenced, when an information is laid before a justice (*e*), or, if there is no information, when the accused is brought before a justice to answer the charge (*f*), or, if there is no preliminary examination before a justice, when an indictment is preferred (*g*).

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was committed or three months after the report of such commissioners, whichever period last expires, but must in any case not exceed two years after the offence was committed (Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 51). (5) Six months in the case of offences against the Unlawful Drilling Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 1) (*ibid.*, s. 7); the offence of unlawfully and carnally knowing or attempting to have unlawful carnal knowledge of a girl of or above the age of thirteen years and under the age of sixteen (Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 5; Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 27; and see *R.* v. *West*, [1898] 1 Q. B. 174, C. C. R.). For any act done in pursuance or execution, or intended execution, of any Act of Parliament or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, duty or authority, the prosecution must be commenced within six months next after the act, neglect or default complained of, or in case of continuance of injury within six months after the ceasing of such injury (Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1; see title PUBLIC AUTHORITIES AND PUBLIC OFFICERS). (6) Three months in the case of blasphemy under 9 Will. 3, c. 35 (information of the blasphemous words must be given within four days after the words spoken (*ibid.*, s. 2)).

Proof of the issue of a warrant which is not executed within the time limited for commencing the prosecution is not proof that the prosecution is commenced in time, unless proof is also given of the information (*R.* v. *Phillips* (1818), Russ. & Ry. 369; *R.* v. *Parker* (1864), Le. & Ca. 459; *R.* v. *Hull* (1860), 2 F. & F. 16). If an indictment is presented within the time limited and is ignored, *semble* the prosecution has been commenced in time, and another indictment found after the expiration of the limited time would be valid (*R.* v. *Killminster* (1835), 7 C. & P. 228). If a prosecution is commenced for one offence (*e.g.*, feloniously shooting) within the limited time, and after the expiration of the limited time an indictment is found for a different offence arising out of the same facts (*e.g.*, an offence under the Night Poaching Act, 1828 (9 Geo. 4, c. 69)), the prosecution is not commenced in time as regards the offence for which the indictment is found, unless the offence for which the indictment is found is one of which the accused person could have been found guilty, if he had been indicted for the other offence (*R.* v. *Casbolt* (1869), 11 Cox, C. C. 385); so, if a prosecution is commenced within the limited time for rape, and the indictment is found after the expiration of such time for an offence specified in s. 9 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), the indictment is in time, because on an indictment for rape a person can be found guilty of any such offence (see Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 9). Where there is a time limited for the commencement of a prosecution, the day on which the offence was committed is to be excluded in the computation of the prescribed time (*Radcliffe* v. *Bartholomew*, [1892] 1 Q. B. 161; see *Pellew* v. *Wonford* (*Inhabitants*) (1829), 9 B. & C. 134; *Williams* v. *Burgess* (1840), 12 Ad. & El. 635). Sundays are to be included in the computation of time, unless the statute prescribing the time expressly excludes them (*R.* v. *Middlesex Justices* (1843), 2 Dowl. (N. S.) 719). In every Act passed after 1850 "month" means calendar month, unless the Act expressly or by implication makes provision to the contrary (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3).

(*d*) As regards offences punishable under the Summary Jurisdiction Acts, except where some other limitation of time is prescribed by statutes, the information must be laid within six calendar months from the time when the matter of the information arose (Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 11; see title MAGISTRATES).

(*e*) *R.* v. *Willace* (1797), 1 East, P. C. 186, C. C R.

(*f*) *R.* v. *Austin* (1845), 1 Car. & Kir. 621.

(*g*) *R.* v. *Killminster* (1835), 7 C. & P. 228.

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SUB-SECT. 2.—*Arrest.*

(i.) *In General.*

Arrest.

607. Arrest consists of the actual seizure or touching of a person's body with a view to his detention (*h*). It may be made either with or without a warrant. An arrest without a warrant may be under a power conferred by common law or by statute, and may be by a private person, or by a peace officer on the direction of a private person, or by a peace officer on his own initiative.

Anyone who assaults any person with intent to resist or prevent lawful apprehension is guilty of a misdemeanour (*i*).

An infant under seven cannot, it seems, be arrested (*k*).

(ii.) *Arrest without Warrant.*

By a private person

608. At common law the power of a private person to arrest is limited to cases where treason or felony has been actually committed or attempted, or where there is immediate danger of treason or felony being committed, or where a breach of the peace has been actually committed or is apprehended (*l*).

Treason or felony

609. If treason or felony has been actually committed, anyone except the King (*m*) may without a warrant arrest a person whom there is reasonable cause for suspecting of having committed the crime (*n*).

Anyone may without a warrant arrest a person whom he sees on the point of committing or attempting to commit treason or felony (*o*), but there is no power of arrest if the attempt has ceased (*p*).

(*h*) See *Genner* v. *Sparks* (1704), 6 Mod. Rep. 173; *Sandon* v. *Jervis* (1858), E. B. & E. 935, Ex. Ch.; *Russen* v. *Lucas* (1824), 1 C. & P. 153. The mere pronouncing of words of arrest without touching the body of the person it is sought to arrest is not an arrest, unless the person submits to the process and goes with the arresting officer. If he does not submit, there can be no arrest, unless the officer lays hold of him (*Horner* v. *Battyn* (1739), Buller's Nisi Prius, 61).

(*i*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 38.

(*k*) *March* v. *Loader* (1863), 14 C. B. (N. S.) 535; see p. 239, *ante*.

(*l*) See 2 Hawk. P. C., c. 12; 2 Hale, P. C. 78; Fost. 318.

(*m*) The King has no power to arrest or order the arrest of anyone (2 Co. Inst. 186, 187; see *Case of Kimbolton* (*Lord*) *and the Five Members* (1641), 4 State Tr. 83).

(*n*) Dalton's Country Justice, p. 448; 2 Co. Inst. 52; 1 Hale, P. C. 489; 2 Hale, P. C. 82; Fost. 310, 318; 2 Hawk. P. C., c. 12, s. 1; *Allen* v. *Wright* (1838), 8 C. & P. 522; *R.* v. *Price* (1838), 8 C. & P. 282. As to hue and cry, see 2 Co. Inst. 172; 1 Hale, P. C. 464; Fost. 309, 310, and p. 300, *post*.

(*o*) 2 Hawk. P. C., c. 12, s. 19; 2 Roll. Abr. tit. Trespass, Imprisonment, 559, E; *Handcock* v. *Baker* (1800), 2 Bos. & P. 260; *R.* v. *Hunt* (1825), 1 Mood. C. C. 93; see *Allen* v. *London and South Western Rail. Co.* (1870), L. R. 6 Q. B. 65.

(*p*) See *Allen* v. *London and South Western Rail. Co.*, *supra*. As to the authority of a servant to arrest in respect of an offence committed or suspected to have been committed against his master's property, see the cases last cited. In cases of injuries to property which are offences against the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), there is now a statutory power of arrest

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Breach of the peace.

610. A private person may also without a warrant arrest anyone who in his presence commits a breach of the peace, when the breach is still continuing, or, if it is not still continuing, when there is reasonable ground for apprehending a renewal of the breach, or when the offender escapes immediately after committing the breach and is taken on fresh pursuit, which commenced immediately and is continued without a break (*q*).

A private person may also, it seems, arrest without a warrant anyone who there is reasonable ground for supposing is about to commit a breach of the peace in the presence of such private person (*r*).

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without a warrant (see s. 61, *ibid.*, and p. 301, *post;* see, too, Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 66, and p. 301, *post*).

(*q*) *Price* v. *Seeley* (1843), 10 Cl. & Fin. 28 H. L., following *Timothy* v. *Simpson* (1835), 1 Cr. M. & R. 757; *R.* v. *Light* (1857), 27 L. J. (M. C.) 1, C. C. R.; 2 Hawk. P. C., c. 12, s. 1. As to persons acting under the command of a justice of the peace in suppressing a riot or in aid of the police, see p. 299, *post*. A breach of the peace is committed, when there is an actual assault (see *Osborn* v. *Veitch* (1858), 1 F. & F. 317; *Coward* v. *Baddeley* (1859), 4 H. & N. 478, and p. 605, *post*), or when public alarm and excitement are caused by a person's wrongful act. Mere annoyance and disturbance or insult to a person or abusive language or great heat and fury without personal violence do not constitute a breach of the peace (*Wheeler* v. *Whiting* (1840), 9 C. & P. 262). A stranger who commits a disturbance in another person's house may be turned out of the house by the householder or by a constable whom he calls to his assistance, but cannot be given in charge (*ibid.*). The persistent ringing of another person's door bell does not of itself constitute a breach of the peace (*Grant* v. *Moser* (1843), 5 Man. & G. 123; but see now Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 54 (16); Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 28). A person who is present at a public meeting and disturbs the meeting by derisive cries and by putting questions and making observations does not commit a breach of the peace, although such conduct might justify the turning the disturber out of the place where the meeting was held (*Wooding* v. *Oxley* (1839), 9 C. & P. 1), or might be ground for a prosecution under the Public Meeting Act, 1908 (8 Edw. 7, c. 66), s. 1. If a person who conducts himself in a disorderly manner in a house, and refuses to leave when requested, resists and lays hands on the householder who attempts to turn him out, the person so resisting commits a breach of the peace for which he may be arrested by the householder without a warrant (*Howell* v. *Jackson* (1834), 6 C. & P. 723); but, except where there is a breach of the peace, there is no power at common law to arrest without a warrant for a mere disturbance (*Green* v. *Bartram* (1830), 4 C. & P. 308; *Rose* v. *Wilson* (1823), 1 Bing. 353; *Reece* v. *Taylor* (1835), 4 Nev. & M. (K. B.) 469). If a person by abusive language or disorderly conduct in or near to a house causes a crowd to assemble and refuses to desist, such conduct by him amounts to a breach of the peace, and justifies an arrest without a warrant by anyone present; "such acts tend to excite the passions of the crowd and to endanger the person or house of the person so abused" or annoyed (*Ingle* v. *Bell* (1836), 1 M. & W. 516; *Cohen* v. *Huskisson* (1837), 2 M. & W. 477). To create a disturbance and molest and obstruct a public officer (*e.g.*, a returning officer) in the execution of his duty is a breach of the peace (*Spilsbury* v. *Michlethwaite* (1808), 1 Taunt. 146, *per* Lord MANSFIELD, C.J., at p. 151). As to resistance to a sheriff, see Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 8 (2), and note (*f*), p. 303, *post*, and title SHERIFFS AND BAILIFFS. If a bystander sees two or more persons fighting, he may arrest any or either of them, and is not bound to inquire who did the first wrong (*Timothy* v. *Simpson* (1838), 1 Cr. M. & R. 757; *Baynes* v. *Brewster* (1841), 2 Q. B. 375). As to fresh pursuit, see *R.* v. *Light* (1857), 27 L. J. (M. C.) 1, C. C. R.; *R.* v. *Walker* (1854), Dears. C. C. 358; *Griffin* v. *Coleman* (1859), 4 H. & N. 265; *R.* v. *Marsden* (1868), L. R. 1 C. C. R. 131; *Timothy* v. *Simpson* (1835), 1 Cr. M. & R. 757; *Price* v. *Seeley* (1843), 10 Cl. & Fin. 28, H. L.

(*r*) *R.* v. *Light* (1857), 27 L. J. (M. C.) 1, C. C. R., *per* WILLIAMS, J., at p. 3.

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If a breach of the peace has been committed, and there is nothing to show that the offender intends to renew the offence, there is no power at common law to arrest without a warrant (*s*).

In cases of misdemeanour other than those which amount to a breach of the peace there is, in the absence of statutory authority, no power to arrest without a warrant (*t*).

Peace officers.

611. Peace officers, *i.e.*, constables and other persons who are specially employed in the preservation of the peace (*u*), have at common law the same powers of arrest that private persons have, and certain additional powers.

Suspicion of felony.

A peace officer may arrest on suspicion of felony, whether a felony has or has not been committed (*x*).

(*s*) *Timothy* v. *Simpson* (1835), 1 Cr. M. & R. 757; *Baynes* v. *Brewster* (1841), 2 Q. B. 375; *R.* v. *Walker* (1854), Dears. C. C. 358; *R.* v. *Marsden* (1868), L. R. 1 C. C. R. 131; but see *R.* v. *Light* (1857), 27 L. J. (M. C.) 1, C. C. R. *Quære* whether, apart from statute, a private person has not the power of arresting an offender committing a misdemeanour and injuring such person's property, if there is no other way of protecting the property (see 2 Roll. Abr. tit. Trespass, Imprisonment, 559, E; *Allen* v. *London and South Western Rail. Co.* (1870), L. R. 6 Q. B. 65; *Hanson* v. *Waller*, [1901] 1 K. B. 390; *Abrahams* v. *Deakin*, [1891] 1 Q. B. 516, C. A.; *Stevens* v. *Hinshelwood* (1891), 55 J. P. 341, C. A.).

(*t*) *Fox* v. *Gaunt* (1832), 3 B. & Ad. 798; *Mathews* v. *Biddulph* (1841), 3 Man. & G. 390; but see *Holyday* v. *Oxenbridge* (1631), Cro. Car. 234; 2 Hawk. P. C., c. 12, s. 20.

(*u*) As to who is a peace officer, see *Cliffe* v. *Littlemore* (1803), 5 Esp. 39. The officers specially employed in the preservation of the peace are (1) justices of the peace, who may themselves apprehend or order by word only the apprehension of any persons committing a felony or breach of the peace in their presence; (2) sheriffs; (3) coroners, both of whom may apprehend without warrant any felon in their jurisdiction; (4) constables; (5) watchmen (4 Bl. Com. 289). Constables may be county or borough or parish or special constables. As to the powers of constables at common law, see 1 Bl. Com. 355. As to special constables, see Special Constables Act, 1831 (1 & 2 Will. 4, c. 41); Special Constables Act, 1835 (5 & 6 Will. 4, c. 43); Special Constables Act, 1838 (1 & 2 Vict. c. 80); Police Act, 1890 (53 & 54 Vict. c. 45), s. 28. As to constables on canals or rivers, see Canals (Offences) Act, 1840 (3 & 4 Vict. c. 50), s. 1. As to constables appointed by the Chancellors or Vice-Chancellors of the Universities of Oxford and Cambridge, see Universities Act, 1825 (6 Geo. 4, c. 97), s. 1. Watchmen, before the establishment of the present police force, were appointed to assist constables; but watchmen having the power of constables may now be appointed under the Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 42. Water bailiffs, with similar powers, are appointed under the Salmon Fishery Act, 1865 (28 & 29 Vict. c. 121), s. 27; Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), s. 36 (4); and Freshwater Fisheries Act, 1884 (47 Vict. c. 11), s. 3 (see title FISHERIES). As to the high constable of the hundred, see 1 Bl. Com. 344, and High Constables Act, 1869 (32 & 33 Vict. c. 47). See generally, title POLICE.

(*x*) *Samuel* v. *Payne* (1780), 1 Doug. (K. B.) 359; *Williams* v. *Dawson* (1788), cited in *Hobbs* v. *Branscomb* (1813), 3 Camp. 420, at p. 421; *Lawrence* v. *Hedger* (1810), 3 Taunt. 14; *Hobbs* v. *Branscomb*, *supra*, 420; *Beckwith* v. *Philby* (1827), 6 B. & C. 635; *Davis* v. *Russell* (1829), 5 Bing. 354; *Nicholson* v. *Hardwick* (1833), 5 C. & P. 495; *Hadley* v. *Perks* (1866), L. R. 1 Q. B., *per* BLACKBURN, J., at p. 456. *Semble*, a constable is not justified in apprehending a person without warrant on suspicion of having received stolen goods, if the constable has no other evidence against such person than the statement of the thief (*Isaacs* v. *Brand* (1817), 2 Stark. 167). Knowledge by a constable that a warrant has been issued by a duly authorised magistrate for the arrest of a person for felony,

It is the duty of a peace officer, on a reasonable charge of felony being made to him by a private person against anyone else, to take the supposed offender into custody (*y*).

Breach of the peace.

612. In cases of misdemeanour a peace officer, like a private person, has at common law no power of arresting without a warrant, except when a breach of the peace has been committed in his presence or when there is reasonable ground for supposing that a breach of the peace is about to be committed or renewed in his presence (*a*).

A peace officer is justified in receiving into custody from a private person a supposed offender whom the private person has lawfully arrested without a warrant (*b*).

If a peace officer sees a breach of the peace committed, or is assaulted or obstructed in the arrest of a felon, he can, if there is a reasonable necessity, call upon a private person for his assistance

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or that an indictment has been found against such a person, is sufficient ground of reasonable suspicion to justify an arrest by the constable, although no warrant has been handed to him (*Creagh* v. *Gamble* (1888), 24 L. R. Ir. 458; Dalton, Country Justice, 447; 1 East, P. C. 300).

(*y*) *Hedges* v. *Chapman* (1825), 2 Bing. 523; *Cowles* v. *Dunbar* (1827), 2 C. & P. 565; *Hogg* v. *Ward* (1858), 3 H. & N. 417. "Whether a felony has been committed or not, if an individual charges a constable to take a party into custody, no action will lie against the constable, because in such a case it is his duty to act and not to deliberate" (*Hedges* v. *Chapman*, *supra*, *per* BEST, J., at p. 526). "If a person comes to a constable and says of another *simpliciter*, 'I charge this man with felony,' that is a reasonable ground, and the constable ought to take the person charged into custody. But if from the circumstances it appears to be an unfounded charge, the constable is not only not bound to act on it, but he is responsible for so doing" (*Hogg* v. *Ward*, *supra*, *per* BRAMWELL, B., at p. 422; see *M'Clougham* v. *Clayton* (1816), Holt (N. P.), 478).

(*a*) See p. 297, *ante*; *Griffin* v. *Coleman* (1859), 4 H. & N. 265; *Hardy* v. *Murphy* (1795), 1 Esp. 294; *Booth* v. *Hanley* (1826), 2 C. & P. 288; *Levy* v. *Edwards* (1823), 1 C. & P. 40; *R.* v. *Bright* (1830), 4 C. & P. 387. A magistrate has no power to arrest for a misdemeanour committed in his presence, where there is no breach of the peace and where it is not necessary to arrest the offender to prevent the renewal of the act (*R.* v. *Poe* (1866), 15 L. T. (N. S.) 37, *per* PIGOT, C. B., at p. 40). A constable may apprehend anyone who aids or abets those who commit a breach of the peace in his presence (*Levy* v. *Edwards*, *supra*, at p. 43). If an offender is apprehended and is in the custody of a peace officer, and a person espouses his cause and encourages him to resist the officer, he may arrest such person (*White* v. *Edmunds* (1792), Peake, 123). If an affray has happened and a blow or wound has been given, and it seems likely that a felony will be committed, a constable may take the offender into custody without a warrant, although he was not present, when the affray took place. But unless there is reasonable ground for believing that a felony will probably be committed, there is no power of arrest (*Coupey* v. *Henley* (1797), 2 Esp. 540).

(*b*) See *Timothy* v. *Simpson* (1835), 1 Cr. M. & R. 757; *R.* v. *Walker* (1854), Dears. C. C. 358; *R.* v. *Light* (1857), 27 L. J. (M. C.) 1, C. C. R.; *Derecourt* v. *Corbishley* (1855), 5 E. & B. 188; *R.* v. *Marsden* (1868), L. R. 1 C. C. R. 131; *Baynes* v. *Brewster* (1841), 2 Q. B. 375; and p. 296, *ante*. If a breach of the peace has been committed but is over, and the offender has quitted the spot where the breach was committed and there is nothing to show that he intends to renew the offence (*e.g.*, when he runs away on the constable being sent for), there is nothing to justify arrest by the constable on the information of the person complaining (*Baynes* v. *Brewster*, *supra*; see *R.* v. *Light*, *supra*; *Cook* v. *Nethercote* (1834), 6 C. & P. 741).

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in arresting an offender, and such person commits an indictable offence if he refuses to aid the constable (*c*).

Statutory power to arrest without warrant.

613. There are a large number of statutes which expressly authorise arrest without a warrant. Such power is in some cases given generally to any person (*d*), in some cases to certain specified

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(*c*) See *R.* v. *Brown* (1841), Car. & M. 314, and p. 506, *post.* So it is the duty of magistrates at the time of a riot to keep the peace and restrain rioters and pursue and take them, and to enable the magistrates to do this they may call on all the King's subjects to assist them, and all the King's subjects are bound to do so upon reasonable warning (*R.* v. *Pinney* (1832), 5 C. & P. 254; and see the Riot Act, 1714 (1 Geo. 1, stat. 2, c. 5), s. 3). Persons who aid the magistrates or constables in a case of necessity are protected from the consequences of their acts (*Redford* v. *Birley* (1822), 3 Stark. 76; *Staight* v. *Gee* (1818), 2 Stark. 445).

There was an old common law process of pursuing felons and those who had dangerously wounded another called "hue and cry," which could be raised by precept of a justice of the peace or by a peace officer or by any private man that knew of a felony; the party raising it had to acquaint the constable of the vill with all the circumstances which he knew of the felony and the person of the felon, and thereupon it was the duty of the constable to search his own town and raise all the neighbouring vills and make pursuit with horse and foot. In the prosecution of such hue and cry the constable and his attendants had the same powers, protection, and indemnification as if acting under a warrant of a justice of the peace (4 Bl. Com. 290; 2 Hawk. P. C., c. 12, s. 5, p. 115). A person who joined in following a suspected felon upon a hue and cry was justified in arresting the party pursued, even though no felony had been committed, for the person who so joined was under the same protection as the constable (1 Hale, P. C. 464). The statutes relating to hue and cry (13 Edw. 1, stat. 2, cc. 1 and 4, 28 Edw. 3, c. 11, 27 Eliz. c. 13, and 8 Geo. 2, c. 16) made the duty of raising and following the hue and cry imperative by imposing on the hundred a liability to make compensation for robberies, if the robber was not taken; and other statutes (*e.g.*, 9 Geo. 1, c. 22) made the hundred responsible for damages done by persons riotously and tumultuously assembled, if the offenders were not convicted. The statutes as to hue and cry were repealed by 7 & 8 Geo. 4, c. 27, and the other statutes by 7 & 8 Geo. 4, c. 31, and the only relic of the former proceeding against the hundred is the remedy which a person who sustains a loss through the destruction of a house, building or any property therein, or the plundering of a stranded ship or boat, or the destruction of machinery by persons riotously assembled together has against the police authority of the district (Riot (Damages) Act, 1886 (49 & 50 Vict. c. 38), s. 2). But the liability of every person in the county to be ready and apparelled at the command of the sheriff and at the cry of the county to arrest a felon still remains (Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 8 (1)), and a person who followed at the cry of the county and arrested a supposed felon would, it seems, be still entitled to the same protection, as if he were a peace officer.

(*d*) *E.g.*, any person may apprehend without warrant anyone found committing an indictable offence in the night, *i.e.*, between 9 p.m. and 6 a.m. (Prevention of Offences Act, 1851 (14 & 15 Vict. c. 19), ss. 11, 13), or anyone found committing any offence punishable by virtue of the Larceny Act, 1861 (24 & 25 Vict. c. 96) (see *ibid.*, s. 103) (except the offence of unlawful angling in the daytime; *ibid.*, s. 24), or anyone committing an offence punishable by virtue of the Public Stores Act, 1875 (38 & 39 Vict. c. 25) (*ibid.*, s. 12; see also *Downing* v. *Capel* (1867), L. R. 2 C. P. 461; *Field* v. *Musgrove* (1867), 16 L. T. 536; *Leete* v. *Hart* (1868), L. R. 3 C. P. 322; and compare *Morris* v. *Wise* (1860), 2 F. & F. 51), or anyone found committing an indictable offence against the Coinage Offences Act, 1861 (24 & 25 Vict. c. 99) (see *ibid.*, s, 31), or anyone found offending against the Vagrancy Act, 1824 (5 Geo. 4, c. 83) (see *ibid.*, s. 6; and *Horley* v. *Rogers* (1860), 2 E. & E. 674), or anyone found committing an offence against s. 146 of the Spirits Act, 1880 (43 & 44 Vict. c. 24), or anyone who is guilty of riotous or disorderly behaviour in any

persons or under certain conditions, as well as to constables or other peace officers (*e*), and in some cases to constables or other peace officers alone (*f*).

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highway or other public place, or is drunk on any highway or other public place, while he is in charge of any carriage etc., or is drunk when in possession of any loaded firearms (Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 12), or is found drunk in any highway or other public place and appears to be incapable of taking care of himself (Licensing Act, 1902 (2 Edw. 7, c. 28), s. 1). Under the Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 55, any person who sees anyone unlawfully breaking, damaging etc. a lamp, watch-house etc. erected under the authority of the Act may apprehend the offender, and any other person may assist in such apprehension (*ibid.*, s. 55). A youthful offender detained in a certified reformatory school or a child detained in a certified industrial school may be apprehended, if while being so detained he escapes from such school (Children Act, 1908 (8 Edw. 7, c. 67), s. 72 (1) and (2)). Under the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 179, 186, 190, any person committing an offence (smuggling etc.) under one of those sections may be detained. Under the Army Act, 1881 (44 & 45 Vict. c. 58), s. 156, any person found committing an offence against that section may be apprehended.

(*e*) Thus, under the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 61, any peace officer or the owner of the property injured or any person authorised by him, may arrest any person found committing any offence against the Act. So, under the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 66, any constable or the owner of property with respect to which an offence punishable under that Act is committed, or any person authorised by him, may arrest a person found committing such offence. Similar provisions are contained in the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89) (see s. 15; see also Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 7). Under the Larceny Act, 1861 (24 & 25 Vict. c. 96), any person to whom any property is offered to be sold, pawned or delivered, if he has reasonable cause to suspect that any offence punishable under that Act has been committed with respect to such property, is authorised and, if it is in his power, required to apprehend the person offering such property (*ibid.*, s. 103; see also the Canals (Offences) Act, 1840 (3 & 4 Vict. c. 50), s. 12, and the Army Act, 1881 (44 & 45 Vict. c. 58), s. 156). Under the Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), where any offence mentioned in s. 34 of the Act is committed, or where on an article being offered in pawn to a pawnbroker he reasonably suspects that it has been stolen or otherwise illegally or clandestinely obtained, the pawnbroker may seize and detain the person (*ibid.*, s. 34; and see *Howard* v. *Clarke* (1888), 20 Q. B. D. 558). Under the Night Poaching Act, 1828 (9 Geo. 4, c. 69), if any person is found committing the offence of unlawfully taking or destroying any game or rabbits by night in any land, or of unlawfully entering or being by night in any land with any gun, net etc. for the purpose of taking or destroying game, the owner or occupier of such land, or any person having a right or reputed right of free warren or free chase thereon, or the lord of the manor or reputed manor wherein such land may be situate, or any gamekeeper or servant of any of these persons, or any persons assisting such gamekeeper etc., may apprehend such offender upon such land, or, in case of pursuit being made, in any other place to which he may have escaped therefrom (*ibid.*, s. 2). Under the Game Act, 1831 (1 & 2 Will. 4, c. 32), where any person is found on any land or in any of the King's forests, parks, chases or warrens in the daytime, in search or pursuit of game etc., any person having the right of killing the game upon such land, or the occupier of the land or any gamekeeper or servant of either of them, or any person authorised by either of them, or an officer of the forest etc., may require the person so found forthwith to quit the land where he is found, and also to tell his christian name, surname, and place of abode. If the person so found does not give his real name or place of abode, or gives a description of his place of abode which is illusory for the purpose of discovery, or wilfully continues or returns upon the land, the person who requires the name etc., and any persons acting by his order and in his aid, may

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(*f*) For note (*f*) see p. 303.

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apprehend the offender (*ibid.*, s. 31). Under the Highway Act, 1835 (5 & 6 Will. 4, c. 50), the surveyor of highways, assistant surveyor, and such other person as they shall call to their assistance, or any other person witnessing the commission of an offence under the Act, may seize the offender, if his name is unknown (*ibid.*, s. 79; and see s. 78).

Under the Railway Regulation Act, 1840 (3 & 4 Vict. c. 97), if any person wilfully obstructs or impedes any officer or agent of any railway company in the execution of his duty upon any railway etc., and refuses to quit upon request made by any officer or agent of the company, any such officer or agent, or any person whom he may call to his assistance, may seize and detain such person (*ibid.*, s. 16). Under the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), all persons acting on behalf of a railway company, and all constables and peace officers, may apprehend and detain any person who is discovered in or after committing or attempting to commit any of the offences mentioned in s. 103 of the Act (evading payment of fare etc.) (*ibid.*, s. 104). Any officer or agent of a railway company, and all persons called by him to his assistance, may seize and detain any person who shall have committed an offence against the Act or the special Act of the railway company, and whose name is unknown to such officer or agent (*ibid.*, s. 154). Under the Regulation of Railways Act, 1889 (52 & 53 Vict. c. 57), any officer of the railway company, or any constable, may detain a passenger who fails, after request by such officer, either to produce or to deliver up his ticket or to pay his fare, and also fails on request by such officer to give his name and address (*ibid.*, s. 5). Under the Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 52, any officer or servant of the promoters or lessees of any tramway, and all persons called by him to his assistance, may seize and detain any person discovered either in or after committing or attempting to commit any offence mentioned in s. 51 of the Act (evading payment of fare etc.) (*ibid.*, s. 52). Under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 50), s. 287 (3), the master or other officer of a duly certificated passenger steamer may detain any person who commits any offence against that section (molesting passengers, evading payment of fare etc.). Under the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), s. 92, if any person carries etc., or attempts to carry etc., into any workhouse any spirituous or fermented liquor without the order in writing of the master, the master, or any officer of the workhouse acting under his direction, may apprehend the offender or cause him to be apprehended. Under the Act 1 Mar., sess. 2, c. 3 ("for preserving peace during divine service"), any constable or churchwarden of the parish etc. where an offence under the Act is committed, or any other officer or other person present at the time of the offence, may arrest an offender against the Act (*ibid.*, s. 1; and see *Williams* v. *Glenister* (1824), 2 B. & C. 699). Under the Ecclesiastical Courts Jurisdiction Act, 1860 (23 & 24 Vict. c. 32), any person guilty of an offence under the Act (brawling etc. in church) may, "immediately and forthwith" after the offence is committed, be apprehended by any constable or churchwarden of the parish etc. where the offence is committed (*ibid.*, s. 3; and see *Kensit* v. *St. Paul's* (*Dean and Chapter*), [1905] 2 K. B. 249; *Cope* v. *Barber* (1872), L. R. 7 C. P. 393). A person committing an offence under the Revenue Act, 1862 (25 & 26 Vict. c. 22), s. 31 (selling cards without a licence), may be apprehended by any constable or officer of Inland Revenue. Under the Pedlars Act, 1871 (34 & 35 Vict. c. 96), s. 18, if a person acting as a pedlar refuses to show his certificate or has no certificate, or refuses to allow the opening or inspection of his pack etc. by a constable or officer of the police, such person may be apprehended by any of the persons authorised to demand the production of the pedlar's certificate, or any other person acting by the order or at the request or in aid of such person. Under the Hawkers Act, 1888 (51 & 52 Vict. c. 33), s. 6, any officer of Inland Revenue or officer of the peace may arrest a person found committing an offence against that section (hawking without licence etc.). Under the Explosives Act, 1875 (38 & 39 Vict. c. 17), s. 78, any person who is found committing an offence for which he is liable to a penalty under the Act, and which tends to cause an explosion etc. in or about any factory etc., may be apprehended by a constable or an officer of the local authority, or by the occupier or servant etc. of the occupier of the factory etc. Under the Metropolitan Board of Works Act, 1877 (40 Vict. c. viii.), s. 9, any constable or any officer of the London County Council (see Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 119, may seize and detain

any person committing or having committed any offence against the Metropolitan Board of Works Act, 1877 (40 Vict. c. viii.), or any bye-law thereunder, if the name or residence of such person is unknown to such officer. Under the Naval Deserters Act, 1847 (10 & 11 Vict. c. 62), s. 9, any person reasonably suspected of being a deserter from the King's navy may be apprehended by the constable of any place where such person is found and, if no such constable can be immediately met with, by any person in the King's service. Under the Army Act, 1881 (44 & 45 Vict. c. 58), s. 154, any person reasonably suspected of being a deserter from the army may be apprehended by a constable or, if no constable can be immediately met with, by any other officer or soldier or "other person." As to "military custody," see *ibid.*, s. 54.

(*f*) Thus, any constable or peace officer may apprehend without warrant any person whom he shall find lying or loitering in any highway, yard, or other place, and whom he shall have good cause to suspect of having committed or being about to commit any felony mentioned in the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100) (see *ibid.*, s. 66), or any felony against the Larceny Act, 1861 (24 & 25 Vict. c. 96) (see *ibid.*, s. 104), or against the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97) (see *ibid.*, s. 57). If a sheriff encounters any resistance in the execution of a writ, he is to take with him "the power of the county" and to go in proper person "to do execution," and may arrest the resisters and commit them to prison, and every such resister is guilty of a misdemeanour (Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 8 (2)). Under the Profane Oaths Act, 1745 (19 Geo. 2, c. 21), s. 3, any constable or other peace officer may seize, secure and detain any person "who shall profanely swear or curse in the presence and hearing" of such constable and who shall be unknown to him. Under the Unlawful Drilling Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 1), s. 2, any justice of the peace or peace officer, or any other person acting in their aid or assistance, may disperse an unlawful meeting or assembly prohibited by the Act (*i.e.*, for the purpose of training or drilling persons to the use of arms without lawful authority), and may arrest and detain any person present at, or aiding, assisting or abetting, any such assembly or meeting. Under the Hosiery Act, 1843 (6 & 7 Vict. c. 40), s. 9, every peace officer and constable, and every watchman duly appointed by law, during such time as he shall be on duty, may apprehend, or cause to be apprehended, any person whom he may reasonably suspect of having or carrying or in any way conveying at any time after sun setting and before sun rising any woollen etc. materials intrusted to any person for the purpose of being manufactured etc., or any tools or apparatus intrusted to any person for manufacturing such materials, if it is supected that such materials etc. have been or are being purloined, embezzled, or otherwise fraudulently disposed of; see also the Frauds by Workmen Act, 1777 (17 Geo. 3, c. 56), s. 11. Under the Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), s. 13, any constable, upon his own view, or upon the complaint and information of any other person who shall declare his name and place of abode to the constable, may seize and secure any offender against the Act. Under the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 3, any constable in any police district, if authorised in writing by the chief officer of police in that district, may take into custody any convict who is the holder of a licence granted under the Penal Servitude Acts, if it appears to such constable that such convict is getting his livelihood by dishonest means (see also *ibid.*, s. 7). Under the Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 2, any constable may take into custody any holder of a licence under the Penal Servitude Acts (see *ibid.*, s. 11) or any person under the supervision of the police in pursuance of the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), whom he reasonably suspects of having committed "any offence." Under the Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 25, any constable may demand the name and address of any person found on any licensed premises at a time when they should be closed, and if such person fails to give his name or address, or if the constable has reasonable ground to suppose that the name or address given is false, and requires evidence of the correctness of the name or address given, and such person fails to give such evidence, the constable may apprehend such person. Similar provisions are contained in the Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 17, in the case of persons found on premises where intoxicating liquor is unlawfully sold or kept. Under the Indecent Advertisements Act, 1889 (52 & 53 Vict. c. 18), s. 6, any constable or other peace officer may arrest any person

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Time for arresting.

614. Where a felony or treason has been actually committed, an arrest without warrant of a person reasonably suspected of having committed the offence is lawful at any time after its commission (*g*).

And where no felony has in fact been committed, a peace officer may, it seems, arrest a person on suspicion at any time after the commission of the act which is supposed to be a felony (*h*).

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whom he shall find committing any offence against the Act. Under the Military Lands Act, 1892 (55 & 56 Vict. c. 43), s. 17, any person who commits an offence against any bye-laws under the Act (see *ibid.*, s. 14) may be taken into custody by any constable or officer authorised in manner provided by the bye-laws. Under the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), s. 43, if a person is seen or found committing, or is reasonably suspected of being engaged in committing, an offence against the Act, a constable may stop and detain him, and if his name and address are not known to the constable, and such person fails to give them to the satisfaction of the constable, the constable may apprehend him. Under the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 4, and the Children Act, 1908 (8 Edw. 7, c. 67), s. 19, any constable may take into custody any person who within view of such constable commits an offence under the Act of 1904, or under Part II. of the Act of 1908, or under ss. 27, 55, or 56 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), or any offence against anyone under the age of sixteen under ss. 5, 42, 43, 52 or 62 of that Act, or under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), or under the Dangerous Performances Acts, 1879 and 1897 (42 & 43 Vict. c. 34 and 60 & 61 Vict. c. 52), or any other offence involving bodily injury to anyone under the age of sixteen; and a constable may also take into custody any person who has committed, or who he has reason to believe has committed, any of the offences mentioned above, if the constable has reasonable ground for believing that such person will abscond, or if the name and address of such person are unknown to and cannot be ascertained by the constable. Under the Street Betting Act, 1906 (6 Edw. 7, c. 43), s. 1, any constable may take into custody without warrant any person found committing an offence under the Act. Special powers of arrest are given to the members of the metropolitan police force; see Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), ss. 28, 34, 38, 46, 47, 48, 54, 62, 63, 64, 65, 66 (see *Stocken* v. *Carter* (1831), 4 C. & P. 477; *Simmons* v. *Millingen* (1846), 2 C. B. 524; *Bowditch* v. *Balchin* (1850), 5 Exch. 378); Metropolitan Police Act, 1864 (27 & 28 Vict. c. 55), s. 1; Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), ss. 12, 23, and compare Metropolitan Streets Act, 1903 (3 Edw. 7, c. 17). As to the powers of arrest of the City of London Police, see stat. 2 & 3 Vict. c. xciv., ss. 18, 30, 31, 32, 35, 44, 45, 46, 48, and Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), s. 23; *Bowditch* v. *Balchin*, *supra*; and see Public Stores Act, 1875 (38 & 39 Vict. c. 25), s. 6. Special powers of arrest are conferred upon constables acting under the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89) (see ss. 14, 15, 36 of that Act); upon constables acting under the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50) (see s. 193 of that Act); upon canal and river police (see Canals (Offences) Act, 1840 (3 & 4 Vict. c. 50), ss. 9, 10, 11); and upon water bailiffs (see Salmon Fishery Act, 1865 (28 & 29 Vict. c. 121), s. 27; Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71) s. 36 (4); and Freshwater Fisheries Act, 1884 (47 Vict. c. 11), s. 3). As to power to arrest by constables appointed by the Chancellors or Vice-Chancellors of the Universities of Oxford and Cambridge, see Universities Act, 1825 (6 Geo. 4, c. 97), s. 3; and p. 270, *ante*. Besides the powers of arrest without warrant that are expressly given by statute to constables, they may, subject to the conditions imposed by each particular statute, exercise all the powers of arrest that are given by a statute to "any person."

(*g*) See Dalton, Country Justice, pp. 447, 478. As to "hue and cry," see 1 Hale, P. C. 464; Fost. 309, 310, and p. 300, *ante*. In the case of treason, it seems, the arrest must be effected within the time limited for the commencement of the prosecution (see p. 456, *post*).

(*h*) But, if a considerable time has elapsed after the facts have taken place

Where power is conferred by statute to arrest a person found or seen committing an offence or doing some specified act (*i*), the arrest must in most cases be made while the offence is actually being committed or the act is being done, or on fresh pursuit (*i*). Except on fresh pursuit the arrest cannot be made without a warrant, after the offence has been completed or the act done (*j*). Certain statutes, however, which give a power of arrest without warrant expressly authorise the making of the arrest after the offence has been committed (*k*).

615. A person who arrests another without a warrant, purporting to act under the powers of a statute, must satisfy all the conditions that the statute imposes; otherwise he incurs liability to an action for false imprisonment, or is deprived of the protection which he would otherwise have (*l*).

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which give rise to the suspicion, a constable could hardly be justified in arresting without warrant on suspicion, unless the supposed felon has absconded, or unless the constable knows that the supposed felon has been indicted for felony or that a warrant has been issued for his arrest on a charge of felony by a duly authorised magistrate (see Dalton, Country Justice, p. 447; 1 East, P. C. 300; *Creagh* v. *Gamble* (1888), 24 L. R. Ir. 458).

(*i*) See p. 300, *ante*.

(*j*) See *Downing* v. *Capel* (1867), L. R. 2 C. P. 461; *Griffith* v. *Taylor* (1876), 2 C. P. D. 194, C. A.; *R.* v. *Curran* (1828), 3 C. & P. 397; *Simmons* v. *Millingen* (1846), 2 C. B. 524; *Morris* v. *Wise* (1860), 2 F. & F. 51; *Mathews* v. *Biddulph* (1841), 3 Man. & G. 390. As to what is fresh pursuit, see *R.* v. *Howarth* (1828), 1 Mood. C. C. 207. There are some offences which a person cannot be "found committing," because they depend upon circumstances which are not all apparent at any particular time. Thus, generally speaking, a person cannot be "found committing" the offence of embezzlement, except in such a case as where a servant who ought to put money received on behalf of the master into the master's till is seen putting it into his own pocket. Where the charge against a servant was that he had embezzled various sums "within the last fortnight," it was held that s. 103 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), did not apply, and that the servant could not be arrested without a warrant as being found committing the offence (*Field* v. *Musgrove* (1867), 16 L. T. 536). So a person cannot be "found committing" the offence, under s. 3 of the Vagrancy Act, 1824 (5 Geo. 4, c. 83), of wilfully refusing or neglecting to maintain his family whom he is legally bound to maintain, and whom he has means to maintain, so that they become chargeable to the parish (*Horley* v. *Rogers* (1860), 2 E. & E. 674).

(*k*) See Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 104, 154; Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 52; Metropolitan Board of Works Act, 1877 (40 Vict. c. viii.), s. 9; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 2, and pp. 302, 303, *ante*.

(*l*) See *Simmons* v. *Millingen* (1846), 2 C. B. 524; *Bowditch* v. *Balchin* (1850), 5 Exch. 378; *R.* v. *Curran, supra*; *Poulton* v. *London and South Western Rail. Co.* (1867), L. R. 2 Q. B. 534. A private person who lawfully arrests another without a warrant has all the protection of a constable, and if the person arrested kills the arrester, the act may amount to murder (*R.* v. *Curran, supra*; and see p. 573, *post*). If a person arrests another in pursuance of a power given by any Act of Parliament, an action against him in respect of any such act must be commenced within six months after the act complained of (Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), s. 1; see title LIMITATION OF ACTIONS). A person is entitled to the benefit of this Act if he honestly and *bonâ fide* believes that he is acting in pursuance of an Act of Parliament, whether there be reasonable ground for such belief or not (*Hermann* v. *Seneschal* (1862), 13 C. B. (N. S.) 392; *Roberts* v. *Orchard* (1863), 2 H. & C. 769, Ex. Ch.; *Chamberlain* v. *King* (1871), L. R. 6 C. P. 474 (explaining *Leete* v. *Hart* (1868), L. R. 3 C. P. 322); and see *Nathan* v. *Cohen* (1812), 3 Camp. 257).

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616. A private person who arrests another under a common law power can only detain him for a reasonable time, and must then either set him free or hand him over to a constable or take him before a justice of the peace (*m*).

Handing over of person arrested to a constable or justice.

If the suspected offender is not liberated and is not taken before a justice with reasonable expedition and by a direct road, the person who arrests is liable to an action of trespass (*n*).

Statutes which authorise a private person to arrest without warrant commonly contain a direction that the person arrested shall be taken before a justice of the peace (*o*), or a direction that he shall be conveyed or delivered to a peace officer or constable in order to his being conveyed as soon as reasonably or conveniently may be before a justice of the peace (*p*).

If a constable or other peace officer arrests a person without warrant, such person must be taken as soon as reasonably may be before a justice of the peace (*q*).

Arrest under Summary Jurisdiction Act, 1879.

A person arrested without warrant for an offence punishable on summary conviction must be brought before a court of summary jurisdiction as soon as practicable after he is taken into custody (*a*).

If it is not practicable to bring him before a court of summary jurisdiction within twenty-four hours after he is taken into custody,

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(*m*) *Wright* v. *Court* (1825), 4 B. & C. 596. In some cases there may be a power to detain a person for a reasonable time for the sake of preserving peace, but no power to take him before a justice; such a person should be liberated when the reasonable time has elapsed (see *Williams* v. *Glenister* (1824), 2 B. & C. 699; 2 Hawk. P. C., c. 12, s. 19).

(*n*) *Wright* v. *Court*, *supra*; *Morris* v. *Wise* (1860), 2 F & F. 51. A private person cannot apprehend another upon suspicion of felony for the purpose of taking him to the place where the felony was committed in order to ascertain whether he was the offender (*Hall* v. *Booth* (1834), 3 Nev. & M. (K. B.) 316). If a private person arrests another without warrant and hands him over to a constable, and the offender is not brought before a justice within a reasonable time, the private person is liable for the delay, except, it seems, where the statute under which he is acting authorises him to deliver the offender to a constable (see *Wright* v. *Court*, *supra*).

(*o*) See Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 103, under which the person found committing must be "immediately apprehended" and "forthwith taken" before some neighbouring justice of the peace (see *R.* v. *Curran* (1828), 3 C. & P. 397); Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 61; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 179; Children Act, 1908 (8 Edw. 7, c. 67), s. 72 (2)).

(*p*) See Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 31; Prevention of Offences Act, 1851 (14 & 15 Vict. c. 19), s. 11; Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 6; Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), s. 55; Children Act, 1908 (8 Edw. 7, c. 67), s. 72 (1), (2).

(*q*) See *Wright* v. *Court*, *supra*; Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 66; Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 104; Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 57, 61; Riot Act, 1714 (1 Geo. 1, stat. 2, c. 5), s. 3. Where two constables were taking a man before a magistrate on the charge of disorderly conduct, and the magistrate met them in the street and sent the prisoner back to the lock-up and told the constables to bring him up for examination the next day, it was held that the magistrate was liable to an action for trespass for sending the plaintiff back to the lock-up, as he ought to have either inquired into the case on the first day, or to have told the constables to take the prisoner before another magistrate (*Edwards* v. *Ferris* (1836), 7 C. & P. 542).

(*a*) Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 38.

a superintendent or inspector of police, or other officer of police of equal or superior rank or in charge of any police station, must inquire into the case, and, except where the offence appears to such officer to be of a serious nature, the prisoner must be discharged on his entering into a recognisance, with or without sureties, to appear before some such court (*b*).

Breaking open doors to arrest.

617. A private person or a constable may break open the outer door of the house of another in order to prevent a murder being committed in such house and to arrest the offender (*c*).

If a felony has been committed and the felon is followed to a house, and there is no other means of entering, a private person or constable may, it seems, break open the door of the house to arrest the offender (*d*). This may also be done if a felony will probably be committed unless a private person or constable interferes to prevent it (*e*).

If an affray occurs in the presence of a constable, and the offenders run away and are immediately pursued by the constable and they enter a house, then the doors may be broken open by the constable to apprehend them in the course of such immediate pursuit (*f*).

Before doors are broken open to effect an arrest due notice must be given and admission be demanded and refused (*g*).

(iii.) *Arrest under Warrant.*

Execution of warrants.

618. A justice's warrant for arrest can only be executed by a constable or peace officer (*h*).

It may be directed to any constable by name, or generally to the constable of the parish or other district within which it is to be executed, or to such constable and all other constables or peace officers in the county or other district within which the justice issuing the warrant has jurisdiction, or generally to all the constables or peace officers within such county or district.

The warrant states shortly the offence on which it is founded and that an information has been sworn, or facts on which it is based

(*b*) Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 38 ; see Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), ss. 70, 71 ; Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 227; Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), s. 9. A person arrested without a warrant under the Game Act, 1831 (1 & 2 Will. 4, c. 32), cannot be detained for a longer period than twelve hours from the time of his apprehension, but must be brought before some justice of the peace within that time, and if he cannot, he must be discharged (*ibid.*, s. 31).

(*c*) *Handcock* v. *Baker* (1800), 2 Bos. & P. 260.

(*d*) See *Smith* v. *Shirley* (1846), 3 C. B. 142 ; 4 Bl. Com. 289. It seems that reasonable suspicion merely does not authorise a private person to break open doors to arrest (4 Bl. Com. 290).

(*e*) *Handcock* v. *Baker*, *supra*, and 2 Hale, P. C. 95.

(*f*) 2 Hawk. P. C., c. 14, s. 8; *R.* v. *Marsden* (1868), L. R. 1 C. C. R. 131.

(*g*) Fost. 320.

(*h*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 9. But a warrant under the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 227, may be executed by a Customs officer. As to the protection of constables and other persons acting by their order and in their aid under a warrant from a justice, see Constables Protection Act, 1750 (24 Geo. 2, c. 44), s. 6.

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proved on oath, and names or otherwise describes the offender; and it orders the person or persons to whom it is directed to apprehend the offender and bring him before the justice issuing the warrant, or before some other justice for the same district, to answer the charge (*i*).

Local limits.

619. A warrant may be executed by apprehending the offender at any place within the county or place within which the justice issuing it has jurisdiction, or in case of fresh pursuit anywhere within the next county or place, and within seven miles of the border of the first county etc. (*k*).

Where the warrant is directed to all constables or other peace officers within the county or other district in which the justice issuing it has jurisdiction, any constable or peace officer for any parish etc. within such county or district may execute it within any parish etc. situate within the jurisdiction of such justice, just as if the warrant was specially directed to such constable by name and although the place in which the warrant is executed is not within the parish etc. for which he is constable or peace officer (*k*).

A warrant need not be made returnable at any particular time, but may remain in force until it is executed (*l*).

Backing warrants.

620. If an offender against whom a warrant has been issued escapes out of the jurisdiction of the justice who issues the warrant, the warrant may be indorsed by a justice having jurisdiction in the place where the offender is, and may thereupon be executed either by the person bringing the warrant or by all other persons to whom it was orginally directed or by any constable or peace officer of the county or place where the warrant is indorsed (*m*).

(*i*) See Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), Schedule, Forms B and D; see also note (*k*) on p. 291, *ante*.

(*k*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 10. See the corresponding provisions of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 3. Apart from these statutes a constable had no power to execute a warrant outside the limits of his own constablewick, unless he was specified by name, in which case his authority was co-extensive with that of the person issuing the warrant (1 Hale, P. C. 459; *R.* v. *Weir* (1823), 1 B. & C. 288; *Gladwell* v. *Blake* (1834), 1 Cr. M. & R. 636; *R.* v. *Sanders* (1867), L. R. 1 C. C. R. 75; *R.* v. *Cumpton* (1880), 5 Q. B. D. 341, C. C. R.). A summons or a warrant issued by a justice of a borough to which the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), applies may be served or executed by the constable to whom it is directed in any county in which the borough or a part of the borough is situate, or at any distance not exceeding seven miles from the borough (*ibid.*, s. 223; *R.* v. *Cumpton*, *supra*; and see County and Borough Police Act, 1856 (19 & 20 Vict. c. 69), s. 6). As to assistance by one police force to another, see Police Act, 1890 (53 & 54 Vict. c. 45), s. 25.

(*l*) It is doubtful whether a justice can withdraw his own warrant, but in a proper case the King's Bench Division of the High Court has power to order the withdrawal of a warrant (*R.* v. *Crossman* (1908), 98 L. T. 760). The warrant remains in force in spite of the death of the justice who issued it (Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 37). A warrant issued under s. 380 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), is only in force for 96 hours (*ibid.*, s. 380).

(*m*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 11; see Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 3. English warrants may be

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621. A constable, who is armed with a warrant for the arrest of a person whom the constable cannot lawfully arrest without a warrant, must have the warrant with him when he effects the arrest; otherwise the arrest is illegal (*n*).

Arrest may be at any place; and at any time.

622. No place gives any person protection from arrest (*o*). A constable having a warrant to arrest a person may after demanding and being refused admittance break open doors to effect an arrest (*p*).

An arrest on a criminal charge can be effected at any time of the day or night (*q*). A person may be arrested on Sunday for an indictable offence (*r*). No person, except the King and a foreign sovereign, is privileged from arrest on a criminal charge (*s*).

Use of force.

623. In arresting and detaining a person reasonable force may be used. A constable may justify the handcuffing of a prisoner, if he attempts to escape or if the handcuffing is necessary to prevent his escaping (*t*).

Searching prisoners.

624. A constable may search a prisoner, if he behaves with such violence of language or conduct that the constable may reasonably think it prudent to search him in order to ascertain whether he has any weapon etc. with which he might do mischief (*a*).

A constable and also, it seems, a private person may upon lawful arrest of a suspected offender take and detain property found in

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backed in Ireland (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 12), the Isle of Man and the Channel Islands (*ibid.*, s. 13; and see Criminal Justice Administration Act, 1851 (14 & 15 Vict. c. 55), s. 18), and in Scotland, and *vice versâ* (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), ss. 14, 15). As to the arrest of fugitive offenders in other parts of the King's dominions, see Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69), Part I.; as to extradition of offenders who have escaped abroad, see title EXTRADITION AND FUGITIVE OFFENDERS.

(*n*) *Codd* v. *Cabe* (1876), 1 Ex. D. 352; see *Galliard* v. *Laxton* (1862), 2 B. & S. 363; *R.* v. *Chapman* (1871), 12 Cox, C. C. 4.

(*o*) The privilege of sanctuary was abolished by 21 Jac. 1, c. 28, s. 7 (repealed by Statute Law Revision Act, 1863 (26 & 27 Vict. c. 125); but see s. 1). An arrest may be effected within the walls of the Houses of Parliament (Erskine May, Parliamentary Practice, 11th ed., 116); but a member cannot, it seems, be arrested within the walls of Parliament while the House of which he is a member is sitting (*ibid.*, 117). As to the Royal Palaces and Courts of Justice, see *Fitzpatrick* v. *Kelly* (1749), cited in *R.* v. *Stubbs*, 3 Term Rep. 740.

(*p*) Fost. 136, 320; *Burdett* v. *Abbot* (1811), 14 East, 1, at pp. 158, 162.

(*q*) See Clerk and Lindsell on Torts, 4th ed., 780.

(*r*) *Rawlins* v. *Ellis* (1846), 16 M. & W. 172; Sunday Observance Act, 1677 (29 Car. 2, c. 7), s. 6; Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 4.

(*s*) As to foreign ambassadors, see p. 245, *ante*. As to members of Parliament, see *Long Wellesley's Case* (1831), 2 Russ. & M. 639. As to advocates, witnesses etc., see *Re Freston* (1883), 11 Q. B. D. 545, C. A.; *Ex parte Lyne* (1822), 3 Stark. 132.

(*t*) *Osborn* v. *Veitch* (1858), 1 F. & F. 317; *Levy* v. *Edwards* (1823), 1 C. & P. 40, at p. 43; *Wright* v. *Court* (1825), 4 B. & C. 596; *Leigh* v. *Cole* (1853), 6 Cox, C. C. 329; *R.* v. *Taylor* (1895), 59 J. P. 393. As to beating or shooting by a constable, see *Levy* v. *Edwards*, *supra*; *R.* v. *Dadson* (1850), 2 Den. 35; *Stocken* v. *Carter* (1831), 4 C. & P. 477; *Barber* v. *Oliver*, *Times*, 17th June, 1892, 13.

(*a*) *Leigh* v. *Cole* (1853), 6 Cox, C. C. 329, at p. 332.

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the offender's possession, if such property is likely to afford material evidence for the prosecution in respect of the offence for which the offender has been arrested (*b*).

SUB-SECT. 3.—*Search Warrants.*

Search warrants.

625. A justice of the peace has at common law the power, on an information being sworn before him alleging a suspicion that larceny has been committed, to issue a search warrant authorising a search in any house etc. in the day time for stolen goods and the arrest of any person found in possession of such goods (*c*).

Except in the case of stolen goods there is no power at common law to issue a warrant authorising the search of a house (*d*). But provision is made by statute for the issue of a search warrant in certain specified cases (*e*).

(*b*) *Dillon* v. *O'Brien* (1887), 20 L. R. Ir. 300; *Tyler* v. *London and South Western Rail. Co.* (1884), Cab. & El. 285. A constable should not take property not in any way connected with the offence charged against the person arrested (*R.* v. *O'Donnell* (1835), 7 C. & P. 138; *R.* v. *Kinsey* (1836), 7 C. & P. 447; *R.* v. *Bass* (1849), 2 Car. & Kir. 822; *R.* v. *Jones* (1834), 6 C. & P. 343). As to orders for the restoration of property to a prisoner, see *R.* v. *Burgiss* (1836), 7 C. & P. 488; *R.* v. *Rooney* (1836), 7 C. & P. 515; *R.* v. *Barnett* (1829), 3 C. & P. 600; *R.* v. *Frost* (1839), 9 C. & P. 129, at p. 133; *Re Bice* (1885), 49 J. P. 264; *R.* v. *Pierce* (1852), 6 Cox, C. C. 117; *R.* v. *London Corporation* (1858), E. B. & E. 509; *R.* v. *Rolfe* (1889), 53 J. P. 823.

(*c*) 2 Hale, P. C. 113, 149, 150; Burns, Justice of the Peace, 30th ed., Vol. V., 1180; see *Elsee* v. *Smith* (1822), 1 Dow. & Ry. (K. B.) 97; *Wyatt* v. *White* (1860), 29 L. J. (EX.) 193; *Jones* v. *German*, [1897] 1 Q. B. 374, C. A. In execution of a search warrant for stolen goods at common law, force may be used to break open doors, if admittance is demanded and refused, but the warrant can only be executed in the day time (Greaves' Criminal Law Consolidation Acts, 2nd ed., p. 400). It seems that by virtue of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 4, a search warrant may now be executed on a Sunday. As to statutes enabling a search in the night time in certain events, see note (*e*), *post.*

(*d*) See *Entick* v. *Carrington* (1765), 19 State Tr. 1030, 1067.

(*e*) See Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 103, which applies the procedure as regards search warrants for stolen goods to goods in respect of which some offence under that Act other than larceny has been committed (see *Jones* v. *German*, [1896] 2 Q. B. 418, and *supra*). As to goods stolen or unlawfully obtained, see Frauds by Workmen Act, 1748 (22 Geo. 2, c. 27), s. 4; Frauds by Workmen Act, 1777 (17 Geo. 3, c. 56), s. 10; Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 25; Hosiery Act, 1843 (6 & 7 Vict. c. 40), ss. 8, 14; Old Metal Dealers Act, 1861 (24 & 25 Vict. c. 110), s. 4; Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 16; Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 36; Army Act, 1881 (44 & 45 Vict. c. 58), s. 156. For other cases where search warrants may be issued or searches made, see the Bread Act, 1836 (6 & 7 Will. 4, c. 37), s. 11 (see as to London, 3 Geo. 4, c. cvi., s. 13); Gold and Silver Wares Act, 1844 (7 & 8 Vict. c. 22), s. 11; Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 46; Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 27; Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 55; Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 65; Petroleum Act, 1871 (34 & 35 Vict. c. 105), s. 13; Explosives Act, 1875 (38 Vict. c. 17), s. 73; Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 119; Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 97; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 203; Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 12; Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 2; Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 13; Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 3; Betting Act, 1853 (16 & 17 Vict. c. 119), s. 11; Cruelty to Animals Act, 1876 (39 & 40 Vict. c. 77), s. 13; Obscene Publications Act, 1857 (20 & 21 Vict. c. 83), s. 1; Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 10; Children Act, 1908 (8 Edw. 7, c. 67), s. 24; Licensing Act,

SECT. 2.—*Preliminary Examination before Justices.*

SUB-SECT. 1.—*The Hearing.*

SECT. 2. Preliminary Examination before Justices.

Appearance of accused before justices.

626. When a person charged with an indictable offence appears or is brought before a justice or justices having jurisdiction to hear the charge, the justice or justices can then proceed with the examination of the charge (*f*).

1874 (37 & 38 Vict. c. 49), s. 17; Licensing Act, 1902 (2 Edw. 7, c. 28), s. 29; Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69), s. 24. See also Public Stores Act, 1875 (38 & 39 Vict. c. 25), s. 6. Under most of these Acts the search warrant must be executed by a constable or other police officer, but under some of them a search by other persons is authorised (*e.g.*, Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 2; Gold and Silver Wares Act, 1844 (7 & 8 Vict. c. 22), s. 11; Petroleum Act, 1871 (34 & 35 Vict. c. 105), s. 13; Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 119; Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 97; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 203; Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 10). Some of the statutes under which search warrants may be issued authorise a search in the day time only (Frauds by Workmen Act, 1748 (22 Geo. 2, c. 27), s. 4; Frauds by Workmen Act, 1777 (17 Geo. 3, c. 56), s. 10; Gold and Silver Wares Act, 1844 (7 & 8 Vict. c. 22), s. 11; Obscene Publications Act, 1857 (20 & 21 Vict. c. 83), s. 1; Malicious Damage Act, 1861 (24 & 25 Vict. c. 29), s. 55; Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 65; Old Metal Dealers Act, 1861 (24 & 25 Vict. c. 110), s. 4; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 204; Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 12). One statute (Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 36), authorises a search "in the hours of business" only. Two statutes authorise a search at any time by day or night (Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 25; Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 27). One statute (the Explosives Act, 1875 (38 Vict. c. 17), s. 73) authorises a search on Sundays as well as on other days. The other statutes mentioned above are silent as to the time at which a search may be made. Some of these statutes expressly authorise the use of force (breaking open doors etc.) if admittance is refused or resistance made (Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 25; Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 3; Betting Act, 1853 (16 & 17 Vict. c. 119), s. 11; Obscene Publications Act, 1857 (20 & 21 Vict. c. 83), s. 1; Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 36; Explosives Act, 1875 (38 Vict. c. 17), s. 73; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 35), s. 203; Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 97; Licensing Act, 1902 (2 Edw. 7, c. 28), s. 29; Children Act, 1908 (8 Edw. 7, c. 67), s. 24 (3). *Quære*, whether there is not in all cases of search warrants, as in warrants of arrest, a power to use force and break open doors, if admittance is demanded and refused (*Launock* v. *Brown* (1819), 2 B. & Ald. 592; *Burdett* v. *Abbot* (1811), 14 East, 1, at pp. 158, 162). Some of the statutes (Frauds by Workmen Act, 1777 (17 Geo. 3, c. 56), s. 10; Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 25; Hosiery Act, 1843 (6 & 7 Vict. c. 40), s. 8; Army Act, 1881 (44 & 45 Vict. c. 58), s. 156; Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 2; Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 13; Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 3; Betting Act, 1853 (16 & 17 Vict. c. 119), s. 11; Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 10; Children Act, 1908 (8 Edw. 7, c. 67), s. 24; Licensing Act, 1874 (37 & 38 Vict. c. 49), s. 17) authorise arrest in certain cases of persons found on the premises searched.

(*f*) The procedure relating to the preliminary examination before justices is chiefly governed by the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42). The accused person may appear before justices in obedience to a summons, or may be brought up before them in custody either with or without a warrant, or, if he is already in prison, may be brought before them under an order of the Secretary of State under the Prison Act, 1898 (61 & 62 Vict. c. 41), s. 11. Any one of the magistrates appointed to act at any of the metropolitan police courts and sitting at such a court, any stipendiary magistrate appointed for any other city, town etc. and sitting at a police court or other place appointed in that behalf, and the Lord Mayor of the City of London or any alderman of the City sitting at the

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Mansion House or Guildhall justice rooms in the City, may act alone in doing anything authorised by the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), ss. 29, 30. It seems that any justice of the peace acting within his jurisdiction may hold the preliminary examination of a person accused of an indictable offence (*ibid.*, s. 17, where the expression used is "any justice or justices"; but see the Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 1, which provides that, if the charge is one of felony or suspicion of felony, one justice may take the examination and commit the accused to trial or discharge him, but if the whole evidence given before such justice neither raises a strong presumption of guilt nor warrants the dismissal of the charge, such justice must order the accused to be detained in custody until he be taken before two justices at the least). The room or building in which the examination is taken is not to be deemed an open court (see s. 19 of the Indictable Offences Act, 1848), but according to some authorities s. 19 has been altered by s. 13 (11) of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), and the law officers of the Crown on 1st December, 1884, advised that justices, even when taking an examination, must sit in open court as prescribed by the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 12, and the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 20 (see Douglas, Summary Jurisdiction Procedure, 9th ed., p. 350). It is submitted, however, that s. 19 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), shows sufficient indication of a "contrary intention" to exclude this interpretation. Moreover, a justice may take at a hospital the depositions of a witness who is dangerously ill, and such depositions, if taken in compliance with the requirements of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17, are admissible in evidence subsequently apart from the provisions of the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 6 (*R.* v. *Katz* (1900), 64 J. P. 807, and p. 327, *post*). This appears to show that a justice may act under the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), in a place which is not an open court. A justice or justices duly authorised to act in the place where they sit have jurisdiction to inquire into charges in respect of:—(1) Offences committed within the county etc. for which the justice or justices act (*R.* v. *Beckley* (1887), 16 Cox, C. C. 331, C. C. R.; see p. 280, *ante*). (2) Offences committed outside the county etc. for which the justices act, if the accused is residing or being or suspected to reside or be within the limits of the jurisdiction of the justices, and appears or is brought before them by a summons or warrant issued by them (see Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 1), or by a warrant issued outside their jurisdiction and backed by a justice within their jurisdiction, if such justice has directed that the accused should be brought before some justice or justices within his jurisdiction, and the prosecutor or some of the witnesses for the prosecution are then present in the county or place where the accused was apprehended (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 11). In such a case the justices must, it seems, give the accused an opportunity of calling witnesses for the defence (see p. 317, *post*). If such justices are of opinion that the evidence is sufficient proof of the charge, they may commit the accused for trial or admit him to bail to appear at his trial in the county etc. where the offence is alleged to have been committed. If the evidence is not sufficient, the justice or justices are to bind the witnesses over to give evidence and order the accused person to be taken before some justice or justices for the county etc. where the offence is alleged to have been committed (*ibid.*, s. 22, and Schedule, Form R (1)). (3) Offences committed on the high seas, or within the Admiralty jurisdiction, or on land beyond the seas, if an indictment may legally be preferred in any place in England or Wales for such offence (see p. 273, *ante*), and if a person charged with such an offence has been brought before the justice or justices under a warrant of a justice acting for the same county etc. (*ibid.*, s. 2; see *R.* v. *Eyre* (1868), L. R. 3 Q. B. 487). A justice who acts for two districts adjoining each other may, while he is in one of these districts, act for the other district (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 5). All the acts of justices, and of any constable or officer in obedience thereto, are to be as good in relation to any detached part of any county which is surrounded in whole or in part by the county for which such justices act, as if the same were to all intents and purposes part of the county for which they act (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 7). As to the qualification of justices, see title MAGISTRATES.

Examination before justices.

The accused person must be present during the whole of the examination (*g*).

The object of the examination is not to determine the guilt or innocence of the accused, but to inquire whether the accused ought or ought not to be committed for trial (*h*).

Counsel etc.

The accused person has the right to be assisted by counsel or solicitor retained by him (*i*). The prosecutor (*i.e.*, the person supporting the charge) must appear by himself or by counsel or solicitor (*k*).

Order of proceedings.

627. The proceedings are commenced by calling the name of the accused person. If he appears, the charge against him is read over.

The accused is not asked whether he is guilty or not guilty of the charge, but the case for the prosecution is commenced at once (*l*).

(*g*) See Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), ss. 17, 18. The procedure under this Act is only applicable to the case of a person in the ordinary sense of the word, that is, to someone whose physical appearance before justices is possible (*ibid.*, ss. 1, 17, 18). It seems, therefore, that there can be no proceeding under this Act for the examination of a charge against a body corporate, and that s. 2 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), as to "person" in a penal act including body corporate does not apply, as a "contrary intention" appears from the language of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), ss. 1, 17, 18; if a corporation is charged with an indictable offence, the proper proceeding is by way of indictment in the first instance. See also title CORPORATIONS, Vol. VIII., p. 390.

(*h*) *R.* v. *Carden* (1879), 5 Q. B. D. 1, *per* COCKBURN, C.J., at p. 6.

(*i*) *R.* v. *Griffiths* (1886), 54 L. T. 280. Before the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), it was held that justices had a discretion whether they would admit or exclude an advocate (*Cox* v. *Coleridge* (1822), 1 B. & C. 37; *R.* v. *Borron* (1820), 3 B. & Ald. 432; *R.* v. *Staffordshire Justices* (1819), 1 Chit. 217; *Collier* v. *Hicks* (1831), 2 B. & Ad. 663). S. 17 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), contemplates the cross-examination of the witnesses for the prosecution by counsel or solicitor for the accused. The accused has no right to have the case adjourned for the attendance of counsel or solicitor (*R.* v. *Cambridgeshire Justices* (1880), 44 J. P. 168; *R.* v. *Biggins* (1862), 5 L. T. 605), but an adjournment for such attendance may (see Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 21), be granted, and should be granted, if the application for such an adjournment is made *bonâ fide*.

(*k*) If the prosecutor or someone on his behalf does not appear to support the charge, the charge will be dismissed, but if the non-attendance is caused by a mistake, a fresh summons should be issued (*R.* v. *Bennett* (1908), 72 J. P. 362). The proceedings do not abate by the death of the justice who issued the summons or warrant (Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 37), or of the person who instituted criminal proceedings (*R.* v. *Truelove* (1880), 5 Q. B. D. 336). Any person may, it appears, take up the prosecution on the death of such person. Most prosecutions are now conducted at the instance of the police, but where there is a private prosecutor present and ready to proceed with the prosecution, he ought to have the conduct of the proceedings, except where the Director of Public Prosecutions takes up the prosecution (see *R.* v. *Taylor*, *Times*, 2nd November, 1896, p. 7).

(*l*) No objection can be taken to the information or complaint on which the summons or warrant in the case has been issued for any alleged defect in substance or in form, or for any variance between it and the evidence adduced on behalf of the prosecution, nor can any such objection be taken to any such summons or warrant; if there is any such variance between the summons or warrant and the evidence that the examining justices think that the party charged has been deceived or misled, the justices, at the request of the party charged, may adjourn the hearing to some future day, and in the meantime remand the party charged or admit him to bail (Indictable Offences Act, 1848

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Opening of case.

If the prosecutor has counsel or solicitor to represent him, the counsel or solicitor may, if the examining justices think fit, make an opening speech giving the outlines of the case.

Evidence.

After the close of the opening speech, or, if there is no counsel or solicitor present for the prosecution, immediately after the reading of the charge, the evidence is adduced (*m*).

(11 & 12 Vict. c. 42), ss. 8, 9, 10; and see p. 319, *post*). An objection by the defendant to the jurisdiction of the justices must, however, be taken before the hearing of the evidence begins, as otherwise the defendant may be considered to have waived the objection (*R.* v. *Hughes* (1879), 4 Q. B. D. 614, C. C. R.).

(*m*) The attendance of witnesses who will not voluntarily appear is secured by a summons issued by a justice on it being proved on oath or affirmation that any person within the jurisdiction of such justice is likely to give material evidence for the prosecution and will not voluntarily appear. The summons is to be under the hand and seal of the justice, and requires the person whose attendance as a witness is desired to appear at a time and place mentioned in the summons before such justice or such other justice or justices for the same county, place etc., who shall be there, to testify what he knows concerning the the charge. If the witness disobeys the summons and no just excuse is offered for the disobedience, then, on it being proved upon oath or affirmation that the summons was served on such person, either personally or by leaving it for him with some person at his last or usual place of abode, the justice or justices before whom the person summoned should have appeared may issue a warrant under his or their hands and seals to bring the person summoned at a time and place mentioned in the warrant before the justice or justices issuing the warrant, or such other justice or justices of the same county etc., as shall then be there to testify concerning the matter. Such a warrant may be issued in the first instance on proof that it is probable that the person will not attend without being compelled; and it may be backed in the same way as a warrant of arrest (see p. 303, *ante*), so that it may be executed out of the jurisdiction of the justice who issued it; if on the appearance of the person who is summoned or brought up on a warrant he refuses to take or be examined on oath or affirmation, or to answer questions put to him without offering any just excuse for such refusal, any justice of the peace then present and having jurisdiction there may by warrant under his hand and seal commit such person to prison for a term not exceeding seven days, unless he in the meantime consents to be examined and to answer (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 16). As to the form of summons in such a case, see schedule to the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), Form L (1); as to warrant to bring up the witness, see *ibid.*, Form L (2), (3); as to warrant of commitment of a witness, see Form L (4). S. 16 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), only authorises the issue of a summons to secure the attendance of a person as a witness, when such person is within the jurisdiction of the justice; a court of summary jurisdiction, however, may, by the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 36, issue such a summons, when the person is outside the jurisdiction of the court; such a summons may be indorsed by a court of summary jurisdiction for the place where the person is or is believed to be, and if the person is served with a summons so indorsed and is paid or tendered a reasonable amount for his expenses, he must obey the summons, and on default is liable to be apprehended. It has been contended that by virtue of s. 13 (11) of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 36 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), now applies to the examination of a person charged with an indictable offence (see Douglas, Summary Jurisdiction Procedure, 9th ed., p. 192). S. 16 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), makes no provision for the case of a witness who attends voluntarily refusing to give evidence, but *semble* the justice or justices present have power to commit in such a case (see *Bennet* v. *Watson* (1814), 3 M. & S. 1, and *Evans* v. *Rees* (1840), 12 Ad. & El. 55). A justice has no power to order a witness to bring or produce documents; the only way of securing the production of documents by a witness is to serve him with a Crown Office *subpœna duces tecum*.

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The statements of the witnesses must be made on oath or affirmation (*n*) in the presence of the examining justice or justices and of the accused person. The accused person, or his counsel or solicitor, has the right to cross-examine any witness (*o*), and the prosecutor, or his counsel or solicitor, can re-examine.

Depositions.

The statements of each witness must be put into writing in the presence of the examining justices and of the accused (*p*); the statements are then known as depositions. The deposition of each witness must be read over to him, and must be signed by him, and the whole of the depositions must be signed by the examining justices (*q*).

As to procuring the attendance of witnesses for the defence, see p. 318, note (*b*), *post*. The attendance of a witness who is in custody may be secured by a warrant issued by a judge of the King's Bench Division under the Criminal Procedure Act, 1853 (16 & 17 Vict. c. 30), s. 9, or by an order in writing under the hand of a Secretary of State under the Prison Act, 1898 (61 & 62 Vict. c. 41), s. 11.

(*n*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17. See Oaths Act, 1888 (51 & 52 Vict. c. 46). As to statements by children, see p. 328, *post*. In the case of a charge of an offence under the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 27, 55, or 56, or any offence against a child under the age of sixteen years under *ibid.*, ss. 5, 42, 43, 52, or 62, or of an offence under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), or an offence under the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), or Part II. of the Children Act, 1908 (8 Edw. 7, c. 67), or under the Dangerous Performances Acts, 1879 and 1897 (42 & 43 Vict. c. 34; 60 & 61 Vict. c. 52), or any other offence involving bodily injury to a child under the age of sixteen years, if a child of tender years who is tendered as a witness does not in the opinion of the justices understand the nature of an oath, the evidence of such child may be received without oath, if such child has in the opinion of the justices sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, but such evidence requires corroboration. The evidence of such child is to be deemed to be a deposition within the meaning of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17 (see Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 15; Children Act, 1908 (8 Edw. 7, c. 67), s. 30).

(*o*) See *R.* v. *Prestridge* (1881), 72 L. T. Jo. 93.

(*p*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17. It is not enough, if the depositions are written down in the absence of the justice and read over and signed afterwards in his presence (*R.* v. *Watts* (1863), 33 L. J. (M. C.) 63, C. C. R.; *R.* v. *Christopher* (1850), 1 Den. 536; *Caudle* v. *Seymour* (1841), 1 Q. B. 889, and *Anon.*, *cor.* HAWKINS, J., at Winchester Assizes, April, 1885, Stone's Justices' Manual, 41st ed., 10, n. (q); but see *R.* v. *Bates* (1869), 2 F. & F. 317). S. 17 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), provides that the statements are to be put in writing by the justice or justices who take the examination, but this duty is generally deputed to the clerk to the justices (see *R.* v. *Watts*, *supra*, *per* MARTIN, B., at p. 64); see also *Ex parte Bottomley*, [1909] 2 K. B. 14. As to justices' clerks, see Justices Clerks Act, 1877 (40 & 41 Vict. c. 43), and title MAGISTRATES.

(*q*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17, and Schedule, Form M. It is sufficient if a justice signs at the conclusion of all the depositions; he need not sign each witness's deposition separately (*R.* v. *Parker* (1870), 11 Cox, C. C. 478, C. C. R., approving and following *R.* v. *Lee* (1864), 4 F. & F. 63, and dissenting from *R.* v. *Richards* (1866), 4 F. & F. 860, which was decided under a misapprehension (see *R.* v. *Parker*, *supra*, at p. 481). The *dicta* of Lord DENMAN, C.J., in *R.* v. *London Corporation* (1844), 5 Q. B. 555, at p. 564, and of ALDERSON, B., in *R.* v. *Johnson* (1847), 2 Car. & Kir. 354, at p. 355, are on a different statute, are inconsistent with *R.* v. *Parker*, *supra*, and cannot be regarded as authorities. It is sufficient if all the depositions have one caption or title; it is not necessary that each deposition should have a separate caption (*R.* v. *Johnson*, *supra*). It does not appear that any

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Accused to be asked if he wishes to say anything.

Caution to accused.

628. After all the witnesses for the prosecution have been examined, the examining justices may, if they consider that the evidence for the prosecution is not sufficient to justify commitment, discharge the accused at once. If they think the evidence is sufficient, they must, without requiring the attendance of the witnesses, read or cause to be read to the accused the depositions taken against him and ask him if he wishes to say anything in answer to the charge. The accused must be cautioned, first, that he is not obliged to say anything, and, secondly, that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of guilt, but that whatever he may then say will be taken down in writing and may be given in evidence against him on his trial (*r*).

Statement of accused.

The accused may then, if he wishes, make a statement not on oath. Such statement, if any, must be taken down in writing, signed by the examining justices, and kept with and transmitted in the same manner as the depositions of the witnesses (*r*).

If the accused is afterwards committed for trial, his statement may, if necessary, be given in evidence against him without further proof, unless it is proved that the justice or justices purporting to sign the statement did not in fact sign it (*r*).

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caption is imperatively required; at any rate, it is sufficient if the caption contains the names of the witnesses and the charge (*R.* v. *Langbridge* (1849), 2 Car. & Kir. 975, 977, Ex. Ch.). In cases of depositions taken out of court under the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 6, a particular form of caption is prescribed (see *R.* v. *Prestridge* (1881), 72 L. T. Jo. 93). Everything that is material should be inserted in the depositions; *e.g.*, if the accused during the examination of a witness makes any statement or observation which is material, such statement or observation should be taken down (*R.* v. *Weller* (1846), 2 Car. & Kir. 223, *per* PLATT, B., at p. 224). It would seem that, if anything that was said is omitted from the depositions, and the depositions are regularly taken and it becomes material to inquire at the trial whether the thing in question was or was not said, evidence is not admissible to contradict the deposition (*R.* v. *Weller, supra*; *R.* v. *Christopher* (1850), 1 Den. 536; but see *R.* v. *Moore* (1869), 20 L. T. 987, where LUSH, J., after consulting KEATING, J., admitted such evidence). If the depositions are irregularly taken, questions may be asked to contradict such depositions (*R.* v. *Christopher, supra*). If the depositions are regularly taken, there is a presumption of law that the accused had full opportunity of cross-examining the witnesses whose evidence is taken down; but where the issue was whether a person was sane enough to be tried, BRETT, J., allowed counsel for the prisoner to ask the witness who proved the deposition of a deceased person whether the accused was, when the evidence was taken, in such a state of mind as to be able to understand what was going on (*R.* v. *Peacock* (1870), 12 Cox, C. C. 21). As to depositions taken in a language which it is alleged the accused does not understand, see *R.* v. *Jones* (1885), 49 J. P. 728. It was said before the passing of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), that if a person of weak intellect is examined as a witness before a justice, and questions are put by a justice and answered by the person called as to his competency to take an oath, such questions and answers should be put down on the depositions (*R.* v. *Painter* (1846), 2 Car. & Kir. 319), but the *dictum* has no application, it seems, to the law as it is now (see Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17). On the death or illness of a witness, his deposition, if regularly taken, but not otherwise, may be used as evidence at the trial (see Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17).

(*r*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 18. As to transmission of the depositions and of the statement of the accused when he is

629. After the accused person has been asked whether he has anything to say in answer to the charge, and, if he says anything, after what he says has been taken down in writing and signed by the examining justices, the justices must ask the accused if he desires to call any witnesses.

Evidence of accused.

The accused person may now himself give evidence, if he wishes, or the wife or husband of the accused may give evidence for him or her on the application of the accused, and may be cross-examined and re-examined (*s*).

If the accused person is the only witness as to the facts called for the defence, he must give evidence immediately after the close of the evidence for the prosecution (*t*).

If the accused intends to call witnesses besides himself, his counsel or solicitor, if he has one, may with the permission of the justices address them and open the defence, or may reserve his speech till after the close of the evidence for the defence (*a*).

Witnesses for the defence.

The witnesses for the defence, where there are any besides the accused, are called after the opening speech, if any, of the counsel or solicitor for the defence, and may be cross-examined and re-examined (*b*). Their statements are to be taken on oath or

committed for trial, see p. 321, *post*. The statement of the accused is admissible in evidence against him subsequently, if the first caution has been given ("You are not obliged to say anything" etc.); it is not necessary to prove that the second caution ("You have nothing to hope from any promise of favour" etc.) was given (*R.* v. *Sansome* (1850), 3 Car. & Kir. 332, C. C. R.). Where an accused is cautioned and makes a statement and a remand follows, and after the remand his solicitor asks some questions of the witnesses and the accused is again cautioned and declines to make a statement, the first statement can be read in evidence at the trial (*R.* v. *Bond* (1850), 3 Car. & Kir. 337, n.). The caution is only needed at the close of the examination of the witnesses for the prosecution; a voluntary statement made by an accused person in the course of the examination and before all the witnesses have been examined is admissible in evidence against him at the trial, although no caution has been previously given (*R.* v. *Stripp* (1850), Dears. C. C. 648). The caution is only applicable to accused persons, and has no application to witnesses (*R.* v. *Coote* (1873), L. R. 4 P. C. 599). If a prisoner before the justices gives evidence on his own behalf under the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), before the caution is given, the evidence which he gives is admissible against him on his trial (*R.* v. *Bird* (1898), 19 Cox, C. C. 180). As to admissions and confessions made out of court by a defendant, see p. 394, *post*.

(*s*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1. As to the limits of cross-examination in such a case, see *ibid.*, and p. 404, *post*.

(*t*) *Ibid.*, s. 2. *I.e.*, it seems, after the accused has been asked if he has anything to say in answer to the charge (see Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 3). In *R.* v. *Bird* (1898), 19 Cox, C. C. 180, the caution was given after the accused had given evidence; *quære* whether the caution should not be given before the accused gives evidence. An accused person may now make a statement, not on oath, in answer to the caution, and he may also make a statement on oath either in addition to or instead of the statement not on oath, or he may decline either to make a statement or to give evidence on oath (see Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (h), which provides that nothing in that Act is to affect the provisions of s. 18 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), or any right of the person charged to make a statement without being sworn).

(*a*) Only one speech on the facts on each side is generally allowed (compare *Dymock* v. *Watkins* (1883), 10 Q. B. D.451, C. A.). But there is no express provision on this point in the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), as there is in the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 14.

(*b*) Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 3. Under

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affirmation, if they know anything relating to the facts and circumstances of the case or anything tending to prove the innocence of the accused, and are to be put in writing and signed by the witnesses and by the examining justices, and, if the accused is committed for trial, are to be transmitted in due course of law with the depositions for the prosecution (*c*).

Decisions of justices on questions of evidence.

630. The examining justices have jurisdiction to decide all questions relating to the admission or rejection of evidence that is tendered before them. If they exercise this jurisdiction and admit or reject evidence, the King's Bench Division of the High Court of Justice will not interfere to direct the justices as to the course they should pursue; if, however, they have jurisdiction to hear evidence and decline jurisdiction, the King's Bench Division may grant a mandamus to them to hear and determine the question whether the evidence should be admitted (*d*).

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the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), there was no provision for securing the attendance or taking the depositions of witnesses for the defence (see *ibid.*, s. 16); but see opinion of Cockburn, A.-G., Douglas, Summary Jurisdiction Procedure, 9th ed., p. 346. The provisions of s. 16 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), relating to the summoning and enforcing the attendance and committal of witnesses for the prosecution were applied to witnesses for the defence by the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 4. As to the depositions of witnesses for the defence, see *ibid.*, s. 3. As to expenses of witnesses for the defence, see Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), ss. 1, 3. Before the passing of the Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), it was held that in taking an examination on a charge of maliciously publishing a defamatory libel under the Libel Act, 1843 (6 & 7 Vict. c. 96), a justice had no jurisdiction to receive evidence of the truth of the libel (*R.* v. *Carden* (1879), 5 Q. B. D. 1). This remains the law as regards any charge of libel, except a charge against a proprietor, publisher or editor, or any person responsible for the publication of a newspaper for a libel published therein. When the charge is against such a person, and is in respect of a libel published in a newspaper, the justice or justices may since the passing of the Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), receive evidence as to the publication being for the public benefit, and as to the matter charged in the libel being true, and as to the report being fair and accurate and published without malice, and as to any other matter which under that or any other Act or otherwise might be given in evidence by way of defence by the person charged on his trial on indictment (*ibid.*, s. 4). As to definition of newspaper, see *ibid.*, s. 1. See also title LIBEL AND SLANDER.

(*c*) Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 8; and see *R.* v. *Carden* (1879), 5 Q. B. D. 1. If the accused has witnesses as to the facts, they ought to be called before the examining justices; evidence for the defence which is heard for the first time at the trial is, in the absence of explanation, open to grave suspicion (*R.* v. *Humphries* (1903), 67 J. P. 396; and *Anon.* (1870), 48 L. T. Jo. 367, *per* HANNEN, J.; *R.* v. *McNair* (1909), 25 T. L. R. 228, C. C. A.). Magistrates ought not to discourage the accused from calling his witnesses (*R.* v. *Hendry* (1909), 25 T. L. R. 635, C. C. A.). A defendant cannot get legal aid under the Poor Prisoners Defence Act, 1903 (3 Edw. 7, c. 38), unless it appears that, having regard to the nature of the defence set up by him as disclosed in the evidence given or statement made by him before the committing justices (*ibid.*, s. 1 (1)), it is desirable that he should have legal aid.

(*d*) *R.* v. *Carden* (1879), 5 Q. B. D. 1, *per* COCKBURN, C.J., at p. 5. The decision of the justices on questions of evidence in no way binds the court which afterwards tries the accused, if he is committed for trial. The court may admit evidence which the justices have rejected and reject evidence which they have admitted. If inadmissible evidence has been admitted by the justices and appears on the deposition of any witness, and such deposition is read in evidence at the trial, the part of the deposition which contains the

SUB-SECT. 2.—*Remand.*

Remand.

631. If from the absence of witnesses or from any other reasonable cause it is necessary or advisable to defer the examination or further examination of the witnesses, the examining justices may by warrant remand the accused in custody from time to time for such time, not exceeding eight days, as the justices may in their discretion think reasonable (*e*).

If the remand is for a time not exceeding three clear days, the accused may be remanded by a verbal order of the examining justices to the custody of a constable or other person in whose custody the accused may then be; such order directs such constable or any other constable or person named to keep the accused in his custody and to bring him before the same or such other justice or justices as shall be there acting at the time appointed for continuing the examination (*e*).

If the remand is for a time exceeding three clear days, the examining justices are to make out a warrant remanding the accused to some prison or place of security in the county etc. for which the justices act; the examining justices may order the accused to be brought before him or them, or before any other justice or justices for the same county etc., at any time before the expiration of the time for which the accused is remanded (*e*).

Bail during remand.

632. Instead of detaining the accused in custody during remand, any one justice before whom the accused appears may discharge him upon his entering into a recognisance with or without sureties, at the discretion of the justice, conditioned for his appearance at the time or place appointed for the continuance of the examination. If the accused does not appear at the time and place mentioned in the recognisance, the justice who discharged him on bail, or any other justice then and there present, may certify on the back of the recognisance the non-appearance of the accused, and may transmit the recognisance to the clerk of the peace of the county etc. within which the recognisance is taken in order that it may be enforced; and the certificate of such justice is to be deemed sufficient *primâ facie* evidence of the non-appearance of the accused (*e*).

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inadmissible evidence may be rejected; but if justices reject evidence which ought to be admitted, and refuse to commit on this ground, there is no way of questioning their decision except by the prosecutor applying for a fresh summons for the same offence or applying to be bound over to prosecute under the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), if that Act applies, and, if it does not, by preferring an indictment before a grand jury.

(*e*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 21, Schedule, Form Q 1 (warrant remanding accused); Q 2 (recognisance); Q 3 (notice of recognisance to the accused and his sureties); Q 4 (certificate of non-appearance). As to persons whom it is intended to send to a reformatory school, see Children Act, 1908 (8 Edw. 7, c. 67), s. 63. It is doubtful whether the limit of eight days for a remand applies, when an accused person is on bail; it has been suggested that in such a case an adjournment may take place for a longer period than eight days (see Douglas, Summary Jurisdiction Procedure, 9th ed., p. 357). A justice cannot adjourn the hearing of a summons for libel on the ground that civil proceedings between different parties for a different libel arising out of the same matter are pending (*R.* v. *Evans* (1890), 62 L. T. 570),

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SUB-SECT. 3.—*Commitment for Trial or Discharge of Accused.*

Decision of the justices to commit or discharge.

633. When all the evidence has been heard, the examining justices then present who have heard all the evidence must decide whether the accused is or is not to be committed for trial (*f*). If the justices are of opinion that a *primâ facie* case has not been made out against the accused by evidence entitled to a reasonable degree of credit, they must forthwith order him to be discharged as to the information then under inquiry. If they are of opinion that the evidence is sufficient, or if the evidence raises a strong or probable presumption of his guilt, they must commit him to prison to take his trial or must admit him to bail (*g*).

Vexatious Indictments Act, 1859.

634. In the case of an offence to which the Vexatious Indictments Act, 1859 (*h*), applies, if the examining justices refuse to commit or admit to bail and the prosecutor desires to prefer an indictment for the offence, the examining justices must take the recognisances of the prosecutor to prosecute the charge, and must transmit the recognisance, information, and depositions (if any) to the court in

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and see title LIBEL AND SLANDER. It is also doubtful whether in case of the refusal of justices to bail on remand in the case of a misdemeanour an application can be made to the King's Bench Division for bail. It has been decided that the right which a person charged with a misdemeanour has to be bailed by the King's Bench Division does not arise till after committal (see *Ex parte Mullins* (1884), Douglas, Summary Jurisdiction Procedure, 9th ed., p. 365 ; and see *R.* v. *Bennett* (1870), 49 L. T. Jo. 387; *R.* v. *Atkins* (1870), 49 L. T. Jo. 421). But see *R.* v. *Manning* (1888), 5 T. L. R. 139, where on the refusal of a justice to grant bail on remand an application for bail was made to the High Court and the case was remitted to the justice with a direction to admit to bail. In *R.* v. *Spilsbury*, [1898] 2 Q. B. 615, at p. 622, it was said that it is not the usual practice for the King's Bench Division to admit to bail during remand.

(*f*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 25. As to the meaning of the expression "committed for trial" in every Act passed after the 1st January, 1890, see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 27. If the examination has been begun before one justice sitting alone and he dies or is otherwise incapacitated before all the evidence is heard, another justice must hear the evidence afresh. As to the procedure in such a case, see *Ex parte Bottomley* (1909), 25 T. L. R. 371.

(*g*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 25, Schedule, Form T (1); see *Cox* v. *Coleridge* (1822), 1 B. & C. 371, *per* BAYLEY, J., at p. 50. The examining justices must, in considering whether the accused should or should not be committed for trial, take into account any evidence that is given for the defence. There may be cases where the evidence for the prosecution is sufficient to justify a commitment, *e.g.*, where it raises a presumption of guilt, as is the case where on a charge of larceny possession of stolen goods soon after a theft is proved against the accused. In such a case the presumption of guilt may be rebutted by the evidence for the defence, *e.g.*, if an accused person found in possession of goods recently stolen gives a satisfactory account of his coming into possession of them; and although the justices have not to try the case, yet, if the evidence for the defence is such in their opinion that there is a strong or probable presumption that the jury would acquit the accused, if he were committed, they should dismiss the charge (*R.* v. *Carden* (1879), 5 Q. B. D. 1, *per* COCKBURN, C.J., at p. 6; see as to libel, Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), s. 4; and as to offences under the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 18 of that Act). As to the duty of the justices either to commit or to dismiss, and as to their convicting summarily for a minor offence, see *Re Thompson* (1860), 30 L. J. (M. C.) 19.

(*h*) 22 & 23 Vict. c. 17 ; see p. 331, *post.*

which the indictment ought to be preferred, in the same manner as he would have done if he had committed the accused (*i*).

SECT. 2. Preliminary Examination before Justices.

Binding over witnesses.

635. The examining justices before whom any witness has been examined on a charge in respect of which the accused may be committed for trial may bind every such witness by recognisance to appear at the court at which the accused is to be tried to give evidence at such court; they may also bind the prosecutor by recognisance to appear at such court and to prosecute, or, if he is a witness, to prosecute and give evidence (*k*).

Transmitting recognisances etc.

636. The recognisances of the witnesses, together with the written information (if any), the depositions, the statement of the accused, and the recognisances of bail (if any) are to be delivered, or caused to be delivered, by the examining justices to the proper officer of the court in which the trial is to be had, before or at its opening, on the first day of the sitting of the court or at such other time as the judge, recorder, or justice who is to preside in the court at the trial may appoint (*l*).

(*i*) Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), s. 2; see pp. 332, 333, *post*.

(*k*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 20; as to form of recognisance see *ibid.*, Schedule, Form O (1). The recognisance is in writing, but is orally acknowledged by the person who enters into it; it must be taken before and signed by a justice or justices. The person who enters into a recognisance acknowledges that he owes a specified sum to the King, to be levied on such person's goods and chattels, if he fails in the condition specified. The condition recites the charge on which the accused has been committed, and is to the effect, in the case of a recognisance by a prosecutor, that if he appears at the court at which the accused is to be tried, and there prefers, or causes to be preferred, and prosecutes duly a bill of indictment for the offence charged, the recognisance is to be void, but otherwise it is to stand in force. If the prosecutor is also to give evidence, the recognisance binds him also to give evidence to the grand jury and the petty jury. Witnesses are bound to give evidence in the same way. The recognisance must specify the profession, trade etc. of the person bound over, his christian name and surname, the parish etc. where he resides, and, if he resides in a city, town or borough, the name of the street and the number (if any) of the house where he resides, and whether he is owner or tenant of or a lodger in such house (*ibid.*, s. 20, and Schedule, Form O (1)). Notice of the recognisance signed by the justice or justices is at the same time to be given to the person bound (*ibid.*, Schedule, Form O (2)). The usual practice in taking recognisances is for the person who is to be bound to enter orally into the recognisance before the officer of the court who takes a minute of it; the recognisance need not be formally drawn up till afterwards (*Ex parte Jeffreys* (1888), 52 J. P. 280). The prosecutor is the person who appears before the justices to support the charge; if such person is willing to be bound over, it is irregular to bind over anyone else to prosecute, and the person who appeared as prosecutor before the justices is entitled to the conduct of the subsequent proceedings (*R.* v. *Bushell* (1888), 16 Cox, C. C. 367). The person who is properly bound over to prosecute has the conduct of the subsequent proceedings, and, if he is willing to carry them on, no one else, except, perhaps, the Director of Public Prosecutions, can intervene to take the conduct out of his hands (see *R.* v. *Yates* (1857), 7 Cox, C. C. 361; *R.* v. *Ottewill*, *Times*, 24th November, 1891, p. 6; *R.* v. *Taylor*, *Times*, 2nd November, 1896, p. 7).

(*l*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 20. The recognisances, depositions etc. should be delivered as soon as practicable after the accused has been committed for trial, or at such time as to enable the judge etc. to read and master the contents of the depositions, before he charges the grand jury (see two letters from the Home Office to Justices' Clerks of 29th December, 1886, and 12th May, 1891). If the Director of Public Prosecutions

SECT. 2. Preliminary Examination before Justices.

Right of accused to have copies of depositions.

637. When the examining justices have decided to commit an accused person for trial or to admit him to bail to take his trial, the accused, at any time after the examination has been completed and before the first day of the assizes or sessions or other first sitting of the court at which the accused is to be tried, is entitled to have copies of the depositions on which he has been committed or bailed from the officer or person having custody of the same on payment of a reasonable sum, not exceeding three-halfpence for each folio of ninety words (*m*).

Committing witness who refuses to be bound over.

638. A witness who refuses to enter into or acknowledge a recognisance to give evidence may by warrant be committed to the common gaol or house of correction for the county etc. in which the accused is to be tried, there to be imprisoned until after the trial, unless in the meantime such witness duly enters into such recognisance before a justice of the county etc. in which the gaol or house of correction is situate (*n*).

Commitment of accused to prison.

639. If the examining justices decide to commit an accused person to prison, they must specify by their warrant of commitment the prison to which he is to be committed (*o*). The prison may be

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has instituted or is carrying on the proceedings, the recognisances, depositions etc. should be delivered to him (Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), s. 5).

(*m*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 27. As to the allowance of costs of the depositions under the Poor Prisoners Defence Act, 1903 (3 Edw. 7, c. 38), see Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 1 (3). There is no right to have copies, unless the accused has been committed or bailed. A person who has been remanded, or a person the charge against whom has been dismissed, has no right to copies (*R.* v. *London* (*Lord Mayor*) (1844), 5 Q. B. 555). The officer or person having the custody of the depositions is the magistrates' clerk, if the depositions have not been transmitted, and the clerk of the court at which the prisoner is to be tried, when the depositions have been transmitted (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 20).

(*n*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 20, and Schedule, Form P (1). A person imprisoned under this section is to be treated as an offender in the second division, unless the justice or justices otherwise order (Prison Act, 1898 (61 & 62 Vict. c. 41), s. 6 (4)). There seems no provision for imprisoning a prosecutor who refuses to enter into a recognisance to prosecute. The practice is for the witnesses to be bound over after the examining justices have decided to commit the accused for trial or to admit him to bail; but s. 20 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), seems to contemplate the possibility of the witnesses being bound over before such decision, as the last part provides that, if a witness has been imprisoned for refusing to enter into a recognisance and the examining justices do not commit the accused or admit him to bail, such justices, or any other justice or justices of the same county etc., may order the keeper of the gaol or house of correction where the witness is in custody to discharge him, and such keeper is thereupon forthwith to discharge him (*ibid.*, Schedule, Form P (2)).

(*o*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 25, Schedule, Form T (1). The warrant, which must specify the date when and the place at which it was issued, is under the hand and seal of a justice, and is directed to the constable of some particular district and to the keeper of the prison to which the accused is committed. It recites the offence with which the accused has been charged, and commands the constable to take the accused and convey him safely to the specified prison together with the warrant, and commands the keeper of the prison to receive the accused into his custody and there safely to keep him until he is delivered thence by due course of law. See, too, Prison Act, 1877

either one near to the place where the accused is to be tried (*p*), or some convenient prison in the county where the accused is to be tried or in any adjoining county, if such prison is appointed by the Secretary of State for the Home Department under any general or special rule for the confinement of prisoners before or during trial (*q*).

SUB-SECT. 4—*Bail.*

Admitting accused to bail.

640. Instead of committing the accused to prison the examining justices may in all cases except treason admit him to bail to appear at the court at which his trial is to take place (*r*).

In cases of treason no person can be admitted to bail, except by order of one of the Secretaries of State or by the King's Bench Division of the High Court of Justice or a judge thereof in vacation (*s*). All other crimes are, as regards bail, divided into two classes by statute (*s*). One class consists of felonies and certain specified misdemeanours; the other embraces all other misdemeanours (*s*).

Discretion of justices.

With respect to the first class, the justices have a discretion whether they shall admit to bail or not, but it is not usual to grant bail in cases of murder.

As to the second class, it seems that the justices have discretion

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(40 & 41 Vict. c. 21), s. 28, and the County Police Act, 1840 (3 & 4 Vict. c. 88), s. 33.

(*p*) Prisons Act, 1835 (5 & 6 Will. 4, c. 38), s. 3. See title PRISONS.

(*q*) Prison Act, 1877 (40 & 41 Vict. c. 21), ss. 24, 27, 28. For the rules made under this Act, see Statutory Rules and Orders Revised, Vol. X., Prison (England), 68. As to commitment for trial at the Central Criminal Court, see Central Criminal Court (Prisons) Act, 1881 (44 & 45 Vict. c. 64). As to commitment of prisoners in counties of cities or towns corporate within which there is no commission of oyer and terminer and gaol delivery directed to be executed, see Criminal Justice Administration Act, 1851 (14 & 15 Vict. c. 55), s. 19. As to the expenses of constables in conveying prisoners, see Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), ss. 22, 26, and Schedule, Forms R (2) and T (2).

(*r*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 23. If the justices decide to grant bail, they are to take the recognisances of the accused and of his sureties (*ibid.*, Schedule, Form S (1), (2)); the condition of such recognisance is that the accused will appear at the time and place of trial, and that he will then surrender and take his trial and not depart the court without leave. Sureties may be dispensed with, if in the opinion of the justices this can be done without tending to defeat the ends of justice (Bail Act, 1898 (61 Vict. c. 7), s. 1). The effect of granting bail is not to set the accused free, but to release him from the custody of the law and to intrust him to the custody of his sureties, who are bound to produce him to answer on his trial at a specified time and place (2 Hawk. P. C., c. 15, s. 3, 138). The sureties may seize their principal at any time (*Anon.* (1704), 6 Mod. Rep. 231; *Ex parte Lyne* (1822), 3 Stark. 132; *Foxhall* v. *Barnett* (1853), 23 L. J. (Q. B.) 7), and may discharge themselves by handing him over to the custody of the law, and the accused will then be imprisoned, unless he obtains fresh bail. The sureties should be of ability sufficient to answer the sum in which they are bound (2 Hawk. P. C., c. 15, s. 4, 139). A contract by the accused or someone else to indemnify a surety against liability under his recognisance is illegal (*Herman* v. *Jeuchner* (1885), 15 Q. B. D. 561, C. A.; *Consolidated Exploration and Finance Co.* v. *Musgrave*, [1900] 1 Ch. 37). As to bail during remand, see p. 319, *ante*.

(*s*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 23.

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to grant or refuse bail except in respect of offences relating to the non-repair or obstruction of a highway, public bridge, or navigable river (*t*). In the case of such offences, which, however, are usually commenced by indictment and do not ordinarily come before justices on a preliminary examination, bail cannot be refused by justices (*a*).

Bail after commitment.

641. The examining justices fix the amount of bail, the number of sureties, and decide whether the sureties are or are not sufficient (*b*).

In exercising their discretion with regard to bail the justices have to consider the nature of the offence, the strength of the evidence, the character or behaviour of the accused, and the

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(*t*) *Ibid.* The misdemeanours in the first class are:—Assault with attempt to commit a felony; attempt to commit a felony, if the attempt is a misdemeanour (see p. 259, *ante*); obtaining or attempting to obtain property by false pretences; receiving stolen property, when the theft is a misdemeanour, or receiving property obtained by false pretences (see Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 95); perjury; subornation of perjury; concealing the birth of a child; wilful or indecent exposure of the person; riot; assault upon a peace officer in the execution of his duty, or upon any person acting in his aid; neglect or breach of duty as a peace officer; and any misdemeanour for the prosecution of which the costs may be allowed out of the county rate (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 23). It is not clear what is the meaning of the words "any misdemeanour for the prosecution of which the costs may be allowed out of the county rate"; those words may mean the misdemeanours for the prosecution of which the costs at the time of the passing of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), might have been allowed out of the county rate, or they may mean misdemeanours for the prosecution of which the costs may under any statute subsequently passed be so allowed. At the time of the passing of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), the only misdemeanours for the prosecution of which costs were allowed out of the county rate were the misdemeanours specified in s. 23 of the Criminal Law Act, 1826 (7 Geo. 4, c. 64); these are the same as those specified in the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 23, with the exception of attempting to obtain property by false pretences and concealment of the birth of a child, which do not appear in s. 23 of the Criminal Law Act, 1826 (7 Geo. 4, c. 64). No misdemeanours are specified in s. 23 of the Act of 1826 which are not specified in s. 23 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), and therefore the words "which may be allowed out of the county rate" are meaningless, if they refer only to misdemeanours the costs of the prosecution of which might be so allowed at the time of the passing of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), for there were no such misdemeanours not specified in s. 23 of that Act. It seems, therefore, that the words in question relate to misdemeanours the costs of the prosecution of which may be allowed under any subsequent statute. If this is so, the effect of subsequent legislation has been to repeal or make almost meaningless that part of s. 23 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), which gives a right to bail to persons accused of misdemeanours other than those specified in the first part of s. 23. By the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 1, the costs in the prosecution of all offences may now be allowed out of the county rate, except offences relating to the non-repair or obstruction of a highway, public bridge, or navigable river (*ibid.*, s. 9 (3). As it is not usual to commence prosecutions for such offences before justices, the effect of the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), seems to be that in all indictable cases which ordinarily come before justices they have a discretion as to the granting of bail.

(*a*) See Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 1.

(*b*) *R.* v. *Saunders* (1847), 2 Cox, C. C. 249. A justice should not interfere to prevent anyone from becoming bail for another (*ibid.*).

seriousness of the punishment which may be awarded if the accused is found guilty (*c*).

642. If an accused person is not admitted to bail when he is committed for trial, he may be admitted to bail at any time afterwards before the first day of the sitting or session at which he is to be tried, or before the day to which such sitting or session may be adjourned (*d*).

Bail by King's Bench Division.

If justices on or after commitment and before trial refuse to grant bail, an application to be admitted to bail may be made to the King's Bench Division of the High Court of Justice or to a judge thereof (*e*).

(*c*) *R.* v. *Scaife* (1841), 9 Dowl. 553 ; *R.* v. *Barronet* (1852), Dears. C. C. 51 ; *R.* v. *Barthelemy* (1852), Dears. C. C. 60 ; *Re Robinson* (1854), 23 L. J. (Q. B.) 286 ; *R.* v. *Rose* (1898), 67 L. J. (Q. B.) 289, C. C. R., at p. 292. If a justice is satisfied with the pecuniary sufficiency of the sureties offered, he cannot reject them because of their character or political opinions (*R.* v. *Badger* (1843), 4 Q. B. 468). As to refusing bail to accomplices, see *R.* v. *Beardmore* (1836), 7 C. & P. 497, *per* PATTESON, J., at p. 499. It is inexpedient to admit the solicitor for the accused as a surety (*R.* v. *Scott Jervis, Times*, 20th November, 1876). Excessive bail ought not to be required (Bill of Rights, 1 Will. & Mar. sess. 2, c. 2). A justice may be indicted, if he refuses bail from improper motives (*R.* v. *Badger* (1843), 4 Q. B. 468, at p. 472), or sued, if he does so maliciously (*Linford* v. *Fitzroy* (1849), 13 Q. B. 240, at p. 247). In deciding questions relating to the granting of bail justices act judicially, and not ministerially (*Linford* v. *Fitzroy*, *supra*).

(*d*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 23. Bail may be granted after commitment by the committing justices, or if they are of opinion that the accused ought to be admitted to bail, they are to certify on the back of the warrant of commitment (see Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), Schedule, Form S (3)) their consent to the granting of bail, and to state the amount of bail which ought to be required ; on the production of such certificate any justice attending or being at the prison where the accused is in custody may admit him to bail. If it is inconvenient for the surety or sureties to attend at the prison to join with the accused in the recognisance, the committing justices may make a duplicate of such certificate (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), Schedule, Form S (4)), and, on such certificate being produced to any justice for the same county etc., such last-mentioned justice may take the recognisance of such surety or sureties in conformity with the certificate. On such recognisance being transmitted to the keeper of the prison and produced, together with the certificate on the back of the warrant of commitment, to any justice attending or being at the prison, such last-mentioned justice may take the recognisance of the accused and order him to be discharged out of custody. In cases where the accused has a right to be admitted to bail by justices (but see p. 324, note (*t*), *ante*), and he has been committed to prison, on his applying to be bailed to any visiting justice of the prison or to any other justice of the same county etc., before the first day of the sitting or session at which he is to be tried, or before the day to which such sitting or session may be adjourned, such justice must accordingly admit him to bail. In all cases where an accused person in custody has been admitted to bail by a justice other than the committing justice, the justice who admits him to bail must forthwith transmit the recognisance or recognisances of bail to the committing justices or one of them, to be transmitted with the depositions to the proper officer (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 23). If a justice admits to bail any person in prison charged with the offence for which he is admitted to bail, such justice must send or cause to be lodged with the keeper of the prison a warrant of deliverance (Indictable Offences Act, 1848 (11 & 12 Vict. 42), Schedule, Form S (5)), under his hand and seal, requiring the keeper to discharge such person, if he be detained for no other offence, and upon such warrant being delivered to or lodged with the keeper, he is forthwith to obey it (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 24).

(*e*) *R.* v. *Spilsbury*, [1898] 2 Q. B. 615 ; 1 Chitty, Criminal Law, 1st ed., 98,

SECT. 2. Preliminary Examination before Justices.

If an application is made for a writ of *habeas corpus* to enable the prisoner to apply to be admitted to bail in the case of a misdemeanour, the King's Bench Division has no discretion, and must grant bail, if there are sufficient sureties offered (*f*).

In cases of felony or treason the King's Bench Division has a discretion (*g*).

SUB-SECT. 5.—*Place of Trial.*

Place of trial.

643. When the examining justices have decided to commit an accused person for trial, they have to determine at what court he is to be tried.

The accused person will be tried, according to the nature of the offence with which he is charged, either at the next assizes for the county or county of a city or town or at the next court of quarter sessions for the county or borough or city for which the examining justices act, unless the accused has been brought before the examining justices in respect of an offence committed in another county, in which case he will be tried at the assizes or quarter sessions for the place where the offence was committed (*h*).

If the offence in respect of which the accused has been committed or bailed is one that can only be tried before a court of oyer and terminer or general gaol delivery, he will be tried before such a court.

Assizes Relief Act, 1889.

644. If the accused is charged with an offence triable at quarter sessions (*i*), he must be tried at the next practicable court of quarter sessions, unless the justices for special reasons think fit otherwise to direct. He is not to be tried at the assizes, unless the justices or the High Court of Justice so direct (*k*).

Every justice by whom a person is committed to prison for trial for any offence triable at quarter sessions must, by indorsement on the warrant of commitment or other notice in writing, inform the governor of the prison whether the persons bound over to prosecute

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per DENMAN, C.J.; *R.* v. *Bennett* (1870), 49 L. T. Jo. 387; *R.* v. *Atkins* (1870), *ibid.*, 421. In *R.* v. *Butler* (1881), 14 Cox, C. C. 530, the Court of Queen's Bench in Ireland refused to grant bail in the case of a misdemeanour. If the defendant is in custody on a charge of felony or misdemeanour, the application in the first instance must be made before a judge in chambers (Crown Office Rules, 1906, r. 111).

(*f*) Habeas Corpus Act, 1679 (31 Car. 2, c. 2); *Re Frost* (1888), 4 T. L. R. 757. It appears from 1 Chitty, Criminal Law, 98, that if the application for bail is made to the court under its common law jurisdiction, no one can claim bail *de jure;* but see *Linford* v. *Fitzroy* (1849), 13 Q. B. 240, *per* DENMAN, C.J., at p. 246. As to the writ of *habeas corpus*, see title CROWN PRACTICE.

(*g*) It is not usual to bail in cases of felony (1 Chitty, Criminal Law, 99). As to bail in cases of murder, see *Mohun's* (*Lord*) *Case* (1697), 1 Salk. 104; *R.* v. *Barronet* (1852), Dears. C. C. 51; *R.* v. *Barthelemy* (1852), Dears. C. C. 60; and *R.* v. *Andrews* (1844), 2 Dow. & L. 10; and Short and Mellor's Practice of the Crown Office, 2nd ed., p. 282. As to applications to the High Court for bail, see Crown Office Rules, 1906, r. 111; Short and Mellor's Practice of the Crown Office, 2nd ed., p. 284. An appeal from the refusal of a divisional court to grant bail will not lie to the Court of Appeal (*R.* v. *Foote* (1883), 10 Q. B. D. 378).

(*h*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), ss. 1, 11, 22; but see Assizes and Quarter Sessions Act, 1908 (8 Edw. 7, c. 41), s. 1 (3). As to the adjournment of the trial, see p. 358, *post.*

(*i*) See p. 268, *ante.*

(*k*) Assizes Relief Act, 1889 (52 & 53 Vict. c. 12), s. 1.

and give evidence at the trial are bound over to attend at a court of quarter sessions or at a court of oyer and terminer or general gaol delivery (*l*).

If a person has been committed to prison charged with an indictable offence, and persons have been bound over to prosecute and give evidence at the next court of quarter sessions for any county or place, and the prisoner is not tried at that court, the next court of oyer and terminer or general gaol delivery having jurisdiction in such county or place must, on his application, unless there are special reasons to the contrary, either cause him to be tried at that court or discharge him from his imprisonment; and if there are such special reasons, they may admit him to bail. If he is not so tried or discharged, and if he is not tried before the holding of the then next subsequent court of oyer and terminer or gaol delivery having jurisdiction in such county or place, that court must try him or discharge him from his imprisonment (*m*).

SUB-SECT. 6.—*Deposition of Witness who is Dangerously Ill.*

Taking of deposition of witness who is ill.

645. If it is proved to the satisfaction of any justice that any person is dangerously ill and in the opinion of some registered medical practitioner is not likely to recover from such illness, and is able and willing to give material information relating to any indictable offence or relating to any person accused of any such offence, and it is not practicable to take the deposition of the witness in the ordinary way, the justice may take in writing the statement on oath or affirmation of the person who is ill, and is to subscribe such statement and add by way of caption a statement of his reason for taking it, and of the day and place when and where it was taken and of the names of the persons (if any) present at the taking of it. Reasonable notice in writing must be served upon the person (whether prosecutor or accused) against whom it may subsequently be proposed to use the statement, and such person or his counsel or solicitor must have, if present, full opportunity of cross-examining the person who makes the statement (*n*).

(*l*) Assizes Relief Act, 1889 (52 & 53 Vict. c. 12), s. 2.

(*m*) *Ibid.*, s. 3. The "special reasons" may be, *inter alia*, the removal of the indictment into another court or the impossibility of producing the witnesses for the prosecution at the court of quarter sessions (*ibid.*).

(*n*) Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 6. See *R.* v. *Shurmer* (1886), 17 Q. B. D. 323, C. C. R.; *R.* v. *Prestridge* (1881), 72 L. T. Jo. 93; *R.* v. *Rees*, *Times*, 20th December, 1888, p. 10; *R.* v. *Quigley* (1868), 18 L. T. 211. If a notice in writing is not served on the person against whom the evidence is to be used, or if the deposition does not contain a proper caption, the deposition cannot be read in evidence under the Act, but it may be admissible in evidence as a dying declaration, if it satisfies the conditions of such a declaration (*R.* v. *Quigley*, *supra*). The Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 7, makes provision for the conveyance of the accused from prison to be present at the taking of the deposition. Such a deposition, if not taken in accordance with the provisions of the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 6, but taken in accordance with the provisions of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17 (*R.* v. *Katz* (1900), 64 J. P. 807), is only admissible in evidence when the justice who takes the deposition is one of the justices who commit (*R.* v. *Rees*, *supra*). And see p. 365, *post*.

SECT. 2. Preliminary Examination before Justices.

If the statement of the witness relates to any indictable offence for which any accused person is already committed or bailed to appear for trial, the justice is to transmit the statement, with the caption above referred to, to the proper officer of the court at which the accused is to be tried. In all other cases he is to transmit the statement to the clerk of the peace of the county etc. in which he took it, and such clerk of the peace is required to preserve the statement and file it as of record (*o*).

Use of deposition at trial.

646. On proof that the witness who has made such statement is dead or that there is no reasonable probability that he will ever be able to travel or to give evidence, and that proper notice was served upon the person against whom it is proposed to use the evidence, and that he or his counsel or solicitor had or might have had, if he had chosen to be present, full opportunity of cross-examining the witness, the statement, if it purports to be signed by the justice by or before whom it purports to be taken, may without further proof be read in evidence either for or against the accused (*o*).

Taking deposition of child.

647. There are similar powers under the Children Act, 1908 (*p*), for the taking and using of the deposition of a child in respect of whom an offence under Part II. of that Act or under other specified Acts (*q*) is alleged to have been committed, if a justice is satisfied by the evidence of a registered medical practitioner that the attendance before a court of any such child would involve serious danger to its life or health (*r*).

SUB-SECT. 7.—*Costs.*

Costs.

648. The examining justices may make an order for the payment out of local funds of the costs of the prosecution, or of the defence, or both, incurred in proceedings before them (*s*).

(*o*) See note (*n*), p. 327, *ante*.
(*p*) 8 Edw. 7, c. 67, ss. 28, 29.
(*q*) See note (*n*), p. 315, *ante*.
(*r*) 8 Edw. 7, c. 67, ss. 28, 29, and see note (*n*) on p. 315, *ante*.
(*s*) Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 1. This Act came into force on the 1st January, 1909 (*ibid.*, s. 10 (2)), and repealed the provisions of most of the Acts relating to costs in criminal cases (*ibid.*, s. 10 (1) and schedule). The costs which may be directed to be paid under the Act are such sums as, subject to the regulations of a Secretary of State under the Act (*ibid.*, s. 5), appear to the court reasonably sufficient to compensate the prosecutor for the expenses properly incurred by him in carrying on the prosecution, and to compensate any person properly attending to give evidence for the prosecution or defence, or called to give evidence at the instance of the court, for the expense, trouble, or loss of time properly incurred in or incidental to the attendance and giving of evidence; the amount of the costs is to be ascertained as soon as practicable by the proper officer of the court (*ibid.*, s. 1 (2)). The proper officer in the case of proceedings before examining justices is, it seems, the justices' clerk. As soon as the amount due to any person is ascertained by the proper officer, he is to pay forthwith to such person the amount due for travelling or personal expenses in respect of his attendance to give evidence, and, so far as the amount is not due in respect of attendance to give evidence, is to forward a certificate of the amount in the case of a committal to the proper officer of the court to which the defendant is committed, and in any other case

Part IV.—Indictments.

SECT. 1.—*Preferring an Indictment.*

SECT. 1. Preferring an Indictment.

Proceeding by indictment.

649. In the trial of crimes which are not summarily dealt with it is now the almost invariable practice to proceed by way of indictment (*t*). There are alternative modes of proceeding by way of impeachment in the case of some crimes (*u*), and in case of some misdemeanours by way of information filed in the King's Bench Division of the High Court of Justice, but such modes of proceeding are now rarely used (*v*).

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to the clerk of the peace of the county or place for which the justices act. Any amount so paid by the proper officer to any person in respect of his attendance to give evidence is to be reimbursed to that officer by the treasurer of the county or borough out of the funds out of which the same is payable under the Act. The certificate forwarded in the case of a committal is to be laid before the court to which the defendant is committed by the officer of the court; a certificate forwarded in any other case is to be laid before the next court of quarter sessions; in either case the court is to consider the certificate and order the treasurer of the county or borough to pay out of the funds from which the amount is payable the amount certified, or any less amount which the court considers should have been allowed (*ibid.*, s. 3). In the case of offences committed, or supposed to have been, in a county borough, the costs are payable out of the borough fund or borough rate, and, in the case of other offences, out of the county fund of the administrative county (see title LOCAL GOVERNMENT) in which the offence is committed or supposed to have been committed. For the purposes of this provision offences committed within the jurisdiction of the Admiralty (see p. 273, *ante*) are to be deemed to have been committed in the place where the offender is prosecuted or tried, or when the offender is tried at the Central Criminal Court, in the county of London; but costs paid in the case of these offences out of any county or borough fund are to be repaid out of moneys provided by Parliament (*ibid.*, s. 4 (1)). The Act applies to all indictable offences except those relating to the non-repair or obstruction of any highway, public bridge, or navigable river (*ibid.*, ss. 1, 9 (3)), but does not affect the operation of any enactment in force providing for the payment of the costs of the prosecution or defence of an indictable offence out of any assets, money or funds, other than local funds, or by any person other than the prosecutor or defendant (*ibid.*, s. 8). As to costs where a person is committed for trial and not ultimately tried, see *ibid.*, s. 7, and as to costs where a prosecutor is bound over under the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), see p. 447, *post;* Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 9 (2). As to the meaning of "prosecutor," see *ibid.*, s. 9 (1), and of "committed for trial," see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 27, and p. 320, *ante*. For the regulations made under s. 5 of the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), see [1908] W. N. 343.

(*t*) In prosecutions for a corrupt and illegal practice at an election the accused persons may be tried summarily before an election court, or on indictment; the latter is the more usual method (see title ELECTIONS). A person may be punished for contempt of court either summarily or on indictment (see title CONTEMPT OF COURT, Vol. VII., p. 280). As to other summary proceedings before the High Court, see pp. 497, note (*g*), and 528, *post*.

(*u*) See p. 265, *ante*.

(*v*) There has been no instance of impeachment since 1806; see p. 265, *ante*. There are two kinds of information in criminal cases:—(1) An information *ex officio* filed by the King's Attorney-General or (if the office of King's Attorney-General is vacant) by the King's Solicitor-General (*R.* v. *Wilkes* (1770), 19 State Tr. 1075) for such enormous misdemeanours as tend to disturb or endanger the King's government, or to molest or affront him in the discharge of his royal functions (4 Bl. Com. 304). It is filed without any leave of the court. Infor-

SECT. 1. Preferring an Indictment.

Coroner's inquisition.

650. A person charged by the verdict of a coroner's jury with murder or manslaughter must, if he is in custody, be arraigned on the inquisition before the court of oyer and terminer or gaol delivery to which the inquisition is returned; but the practice in the case of such a verdict is to prefer a bill of indictment for murder or manslaughter before the grand jury, and if the bill is found, to arraign and try the accused on the indictment and on the inquisition together. If no bill is preferred, or if a bill is preferred and

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mations have been filed *ex officio* for the following offences:—Conspiracy to impair the King's revenue (*R.* v. *Starling* (1664), 1 Sid. 174); riot (*R.* v. *Stroude* (1681), 2 Show. 148); imprisoning the governor and subverting the government of Madras (*R.* v. *Stratton* (1779), 1 Doug. (K. B.) 239); disobedience to an Order in Council made under a statute for performing quarantine (*R.* v. *Harris* (1791), 4 Term Rep. 202); the receipt of bribes by officers of the East India Company (*R.* v. *Stevens and Agnew* (1804), 5 East, 244; *R.* v. *Douglas* (1846), 13 Q. B. 42); misbehaviour by the Vice-Chancellor of the University of Oxford in the neglect of his duty both as a vice-chancellor and as a justice of the peace (*R.* v. *Purnell* (1748), 1 Wils. 239); breach of duty by a justice of the peace in not suppressing a riot (*R.* v. *Pinney* (1832), 3 State Tr. (N. S.) 17); conspiracy to stir up disaffection and to induce tenants not to pay rent (*R.* v. *Parnell* (1881), 14 Cox, C. C. 508); the issue of a fraudulent balance-sheet by the directors of a joint-stock bank (*R.* v. *Brown* (1858), 7 Cox, C. C. 442); offences at parliamentary elections, *e.g.*, undue influence (*R.* v. *Duggan* (1873), 7 I. R. C. L. 507, 94); obstructing voters and intimidation (*R.* v. *Conway* (1858), 7 I. C. L. R. at p. 519); bribery or advancing money to be used in bribery (*R.* v. *Leatham* (1861), 3 E. & E. 658; *R.* v. *Boyes* (1861), 1 B. & S. 311; *R.* v. *Charlesworth* (1861), 1 B. & S. 460); libels of a public kind, *e.g.*, blasphemous libels (*R.* v. *Eaton* (1812), 31 State Tr. 927; *R.* v. *Carlile* (1819), 3 B. & Ald. 161; *R.* v. *Waddington* (1822), 1 B. & C. 26); obscene libels (*R.* v. *Wilkes* (1770), 4 Burr. 2527; *R.* v. *Curle* (1727), 17 State Tr. 153); seditious libels, *e.g.*, libels on the Sovereign (*R.* v. *Clerk* (1728), 1 Barn. (K. B.) 304; *R.* v. *Wilkes* (1770), 4 Burr. 2527; *R.* v. *Lambert* (1810), 2 Camp. 398; *R.* v. *Harvey* (1823), 2 B. & C. 257); libels on the government (*Case of the Seven Bishops* (1688), 12 State Tr. 183; *R.* v. *Laurence* (1699), 12 Mod. Rep. 311; *R.* v. *Tutchin* (1704), 14 State Tr. 1095; *R.* v. *Francklin* (1731), 17 State Tr. 626; *R.* v. *Horne* (1777), 20 State Tr. 651; *R.* v. *Cobbett* (1804), 29 State Tr. 1; *R.* v. *Hunt* (1811), 31 State Tr. 367; *R.* v. *Sutton* (1816), 4 M. & S. 532; *R.* v. *Burdett* (1820), 3 B. & Ald. 717); libels on the judges and on the administration of the law (*R.* v. *Gordon* (*Lord George*) (1787), 22 State Tr. 175; *R.* v. *White* (1808), 1 Camp. 359, n.); libels on the Houses of Parliament (*R.* v. *Rayner* (1732), 2 Barn. (K. B.) 232; *R.* v. *Owen* (1752), 18 State Tr. 1203); libels on the Constitution (*R.* v. *Reeves* (1796), 26 State Tr. 529); libels on foreign sovereigns and ambassadors (*R.* v. *Peltier* (1803), 28 State Tr. 529; *R.* v. *Gordon* (*Lord George*), *supra*; *R.* v. *Vint* (1799), 27 State Tr. 627; *R.* v. *D'Eon* (1764), 1 Wm. Bl. 510). No information *ex officio* has been filed in England in recent years; the last instance is said to be that of *R.* v. *Cate and Tarry* (1887), Archbold's Criminal Pleading, 23rd ed., 143.

(2) An information by the Master of the Crown Office at the instance of a private person. It requires the leave of the court, which is only granted for gross and notorious misdemeanours which do not specially concern the State, but which on account of their magnitude deserve public animadversion (stat. 4 & 5 Will. & Mar. c. 18, ss. 1, 5; 4 Bl. Com. 304; and see *R.* v. *Labouchere* (1884), 12 Q. B. D. 320). Such informations in cases of libels can only be granted at the instance of some persons who are in some public office or position (*R.* v. *Labouchere*, *supra*), and are seldom granted (see *R.* v. *Labouchere*, *supra*, and Shortt on Informations, 12). The modern practice is to proceed by way of indictment; all offences for which informations were formerly issued were always also triable by indictment. For recent instances of criminal informations at the instance of justices, see *R.* v. *Masters* (1889), 6 T. L. R. 44; *R.* v. *Russell* (1905), 93 L. T. 407.

ignored, it is the practice to arraign the accused formally on the coroner's inquisition before a petty jury and to direct such jury to acquit him. An accused person may be tried before a petty jury on a coroner's inquisition (*x*), but this course is very rarely adopted.

Right to prefer a bill of indictment at common law.

651. At common law any person may prefer a bill of indictment before a grand jury against anyone whom he accuses of committing an indictable crime, and that without any previous inquiry before justices or any leave of any judge or any notice to the person against whom the indictment was presented. This right still exists, except where it has been taken away or restricted by statute, but the usual practice is only to prefer a bill of indictment after laying an information before justices of the peace sitting in petty sessions (*y*).

Vexatious Indictments Act, 1859.

652. For offences to which the Vexatious Indictments Act, 1859 (*a*), applies, except in the cases therein mentioned, no bill of indictment can be presented to or found by a grand jury—(1) unless the prosecutor or other person presenting the indictment has been

(*x*) See 1 East, P. C. 371; *R.* v. *Cole* (1813), 3 Camp. 371; *R.* v. *Maynard* (1812), Russ. & Ry. 240; *Re Ward* (1861), 30 L. J. (CH.) 776; Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 5 (1). A conviction for murder or manslaughter on a coroner's inquisition without an indictment found by a grand jury is said to be unknown in practice (4 Bl. Com. 301 (16th ed.), note by COLERIDGE, quoted *arg.* in *R.* v. *Ingham* (1864), 5 B. & S. 257, at p. 265). But a woman arraigned and tried for the murder of her child on a coroner's inquisition after the grand jury had thrown out the bill has been found guilty of concealment of birth (*R.* v. *Maynard, supra*; *R.* v. *Cole, supra*).

(*y*) See p. 290, *ante*. In prosecutions against a bankrupt or any other person for any statutory misdemeanour in cases of bankruptcy a court having jurisdiction in bankruptcy may commit the bankrupt or such other person for trial, and no preliminary inquiry before justices in such a case is required (Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 165; see title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 352). In criminal proceedings against a corporation (see pp. 239, 313, *ante*) and in proceedings by way of indictment for the non-repair or obstruction of highways, bridges etc. and for other nuisances it is not usual to have a preliminary examination before justices, and in such proceedings the presenting of an indictment is the first step.

(*a*) 22 & 23 Vict. c. 17. These offences are: perjury and subornation of perjury, conspiracy, obtaining money or other property by false pretences, keeping a gambling house or a disorderly house, indecent assault (22 & 23 Vict. c. 17, s. 1); misdemeanours under Part II. of the Debtors Act, 1869 (32 & 33 Vict. c. 62), altered by the Bankruptcy Acts, 1883 and 1890 (46 & 47 Vict. c. 52, s. 163; 53 & 54 Vict. c. 71, s. 26); see Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 18, and Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 165; libel (Newspaper and Libel Registration Act, 1881 (44 & 45 Vict. c. 60), s. 6); misdemeanours under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 17, and the Children Act, 1908 (8 Edw. 7, c. 67), s. 35; and offences punishable on indictment under the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 13. An attempt to obtain property by false pretences is not within the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17) (*R.* v. *Burton* (1875), 13 Cox, C. C. 71, C. C. R.). Giving false evidence before a naval court-martial held under the Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), is perjury within the meaning of the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17). See Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), s. 67 of which solves the doubts that were expressed in *R.* v. *Heane* (1864), 4 B. & S. 947, as regards a prosecution under the Naval Discipline Act, 1861 (24 & 25 Vict. c. 115), and, it seems, makes the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), applicable to a prosecution for false evidence given out of England at a naval court-martial held under the Naval Discipline Act, 1866 (29 & 30 Vict. c. 109). See also p. 320, *ante*.

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bound by recognisance to prosecute or give evidence against the person accused of the offence; or (2) unless the accused has been committed to or detained in custody, or has been bound by recognisance to appear to answer to an indictment to be preferred against him for such offence; or (3) unless the indictment is preferred by the direction or with the consent in writing of a judge of the High Court of Justice or of the King's Attorney-General or Solicitor-General, or (in the case of an indictment for perjury) by the direction of any court, judge, or public functionary authorised (*b*) to direct a prosecution for perjury (*c*).

Binding prosecutor over when justices refuse to commit.

653. If on the preliminary hearing before justices for an offence to which the Act applies the justices refuse to commit the accused or to bail him to be tried for such an offence, and the prosecutor desires to prefer an indictment for such an offence, the justices must take the recognisance of the prosecutor to prosecute the charge and transmit the recognisance with the information and depositions to the court in which the indictment ought to be preferred (*d*);

(*b*) The persons so authorised are: judges of the superior courts, any of the commissioners of assize, nisi prius, oyer and terminer or gaol delivery, any justices of the peace, recorder or deputy recorder, chairman or other judge holding any general or quarter sessions of the peace, any judge or deputy judge of any county court or any court of record, any justice of the peace in special or petty sessions, or any sheriff or his lawful deputy before whom any writ of inquiry or writ of trial from any of the superior courts is executed (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 19; see p. 496, *post*).

(*c*) Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), s. 1. Justices of the peace for a county have power to act generally throughout the county in the commission of the peace for which their names are placed, and there is nothing in this Act or elsewhere that prevents the justices who ordinarily act in one petty sessional division from committing a person for trial in respect of an act arising in another petty sessional division (*R.* v. *Beckley* (1887), 20 Q. B. D. 187, C. C. R.). If three persons are bound over to appear and answer an indictment for conspiracy and the Attorney-General gives his fiat for the prosecution of a fourth person and an indictment is subsequently preferred against all four, such an indictment is valid (*Knowlden* v. *R.* (1864), 33 L. J. (M. C.) 219). If an indictment contains two counts, one relating to the charge to which the commitment relates and a second count relating to another charge, the second count, unless it comes within s. 1 of the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35) (see p. 333, note (*h*), *post*), ought to be quashed, and if it is not quashed and evidence is given relating to the second count which is not admissible as evidence relating to the first count, and the accused is convicted, the conviction is bad (*R.* v. *Fuidge* (1864), Le. & Ca. 390).

(*d*) Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), s. 2. If there is a substantial charge made *bonâ fide* and it is within the jurisdiction of the justices and the justices dismiss the charge on the ground that there is no evidence to support it, the justices must take the recognisance of the prosecutor, if he offers to be bound (*R.* v. *London Corporation* (1886), 16 Cox, C. C. 77). If the justices refuse to take the recognisance in such a case, a mandamus will lie to compel them to do so (*ibid.*). If no indictable offence is disclosed in the information, the justices should not take the recognisance and cannot be compelled to do so (*Ex parte Wason* (1869), L. R. 4 Q. B. 573). If a summons is heard and dismissed and no application is made by the prosecutor to be bound over to prosecute, and the prosecutor lays a second information for the same subject-matter, and the justices refuse to take this information, they are within their right, and they cannot on such a second application be called upon to bind the prosecutor over (*R.* v. *Battier* (1880), 44 J. P. 490). The Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), s. 2, has no application, except when the accused has been charged before justices. If no summons or warrant is issued, no application

an indictment may then be preferred in spite of the refusal of the justices to commit the accused for trial (*e*).

Any count or counts relating to offences to which the Vexatious Indictments Act, 1859 (*f*), applies may be joined with other counts in an indictment, if apart from that Act they may be lawfully joined (*g*), and if in the opinion of the court before which the indictment is preferred, such count or counts are founded upon the facts or evidence disclosed in any examinations or depositions taken before a justice of the peace in the presence of the person accused and duly transmitted to such court; and nothing in the Act is to prevent such indictment being found, if it is presented to the grand jury with the consent of such court (*h*).

Adding counts.

654. An indictment is a written accusation presented by a grand jury to a court of oyer and terminer or general gaol delivery or quarter sessions and charging one or more persons with the commission of one or more crimes.

What an indictment is.

An indictment lies for any treason, felony, or misdemeanour,

When it lies.

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can be made under s. 2 (*Ex parte Reid* (1885), 49 J. P. 600). If a prosecutor is bound over, and does not prefer an indictment to the grand jury of the court at which he is bound over to prosecute, the recognisance lapses and cannot, it seems, be enlarged, and no indictment can be preferred to a subsequent court (*R.* v. *Eayres* (1900), 64 J. P. 217). If the justices refuse to commit and no application is made to them for the binding over of the prosecutor, the direction of a judge of the High Court of Justice or the fiat of the Attorney-General or Solicitor-General may be obtained, and an indictment may then be preferred (*R.* v. *Rogers* (1902), 66 J. P. 825). In the case of a prosecution for perjury the direction of a judge etc. to prosecute may be given after the lapse of an interval (*e.g.*, a fortnight) after the trial at which the perjury is alleged to have been committed, and no previous summons or notice to the accused or affidavit of the facts is necessary (*R.* v. *Bray* (1862), 3 B. & S. 255, in which a report in the *Times* newspaper of the trial was laid before the judge to refresh his memory, and he wrote on it "I consent to the prosecution in this case," and this was held to be sufficient within the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17)).

(*e*) If an indictment is preferred by a private prosecutor under this section and is found and the person accused is acquitted, the prosecutor may be ordered to pay the whole or any part of the costs incurred in or about the defence (see Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 6 (2). For the liability for costs of the Director of Public Prosecutions see Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), s. 7, and *Stubbs* v. *Director of Public Prosecutions* (1890), 24 Q. B. D. 577).

(*f*) 22 & 23 Vict. c. 17.

(*g*) See *infra*.

(*h*) Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 1. See *R.* v. *Bell* (1871), 12 Cox, C. C. 37; *R.* v. *Brown*, [1895] 1 Q. B. 119, C. C. R. If it is sought to add a count in respect of a fresh charge the facts of which never were before the justices or were before them and abandoned, the consent of the court is not a mere formality or a matter of course, and if it is obtained without the knowledge of facts that ought to have been brought before the court (*e.g.*, that the fresh charge was before the justices and was withdrawn), it is invalid, and a conviction obtained after such consent is given and such counts added is liable to be set aside (*R.* v. *Bradlaugh* (1883), 15 Cox, C. C. 217). If counts are added containing matter which does not appear on the depositions, such counts if added without leave should be quashed (*R.* v. *Crabbe*, (1895) 59 J. P. 247). Even if the counts which are added do consist of matter appearing on the depositions, yet if they are embarrassing, evidence will not be allowed in regard to such charge (*R.* v. *Harris* (1900), 64 J. P. 360). See also p. 342, *post*.

SECT. 1. Preferring an Indictment.

except in the case of those offences over which courts of summary jurisdiction have exclusive jurisdiction (*i*).

SECT. 2.—*Form of Indictments.*

SUB-SECT. 1.—*Necessary Contents of Indictment.*

Form.

655. In form an indictment is a presentment by a grand jury that one or more persons named or otherwise identified have committed one or more crimes for which an indictment lies, and it must contain specific allegations that the person or persons accused have committed the particular crime or crimes charged.

Counts.

It may contain only one "count," or paragraph, or a number of counts, but if it contains more than one count, each count must aver the commission of a distinct and separate crime by the person accused, and each count must be of itself independent and complete (*k*).

Result of presentment of indictment.

The result of the presentment of an indictment which is sufficient in law is that the person or persons accused, if and when they are in custody, are called upon to plead to the indictment, that is, to say whether they are guilty or not guilty of the crime or crimes alleged. No person can be called upon to plead to an indictment which is not sufficient in law (*l*).

What an indictment must contain.

656. In order to be sufficient in law an indictment (1) must contain at the beginning a marginal note which describes the venue or the area of jurisdiction of the court to which the indictment is presented (*m*); (2) it must commence with an allegation that it is presented on oath by a grand jury (*n*); (3) it must proceed to aver that the person or persons accused have committed the particular crime or crimes alleged, and it must set out all the ingredients of the offence charged, the facts, circumstances, and intent which constitute the crime, and must do this with certainty and without repugnancy or duplicity (*o*).

(*i*) As to these offences, see title MAGISTRATES. The offences for which an indictment lies are set out in Parts X. to XIII., pp. 450 *et seq.*, *post*; and see p. 271, *ante*.

(*k*) See *R.* v. *Waters* (1848), 1 Den. 356. As to the cases in which separate crimes can be alleged in one indictment or in one count, see p. 342, *post*.

(*l*) As to the amendment of indictments, see p. 344, *post*.

(*m*) *E.g.*, the note is usually in this form, { Worcestershire / to wit } in the case of an indictment found by a grand jury of a county at the quarter sessions or assizes, or { Borough of Wolverhampton / to wit } in the case of an indictment found by a grand jury of a borough at the borough quarter sessions (see p. 267, *ante*, and Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 23). Want of a proper or perfect venue does not now vitiate an indictment (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 23). As to venue, see p. 279, *ante*.

(*n*) The beginning of an indictment is in this form, "The jurors for our lord the King upon their oaths present that." The words "for our lord the King" are not essential (see *R.* v. *Turner* (1839), 2 Mood. & R. 214; *Broome* v. *R.* (1848), 12 Q. B. 834, Ex. Ch.). If there are more counts than one, each count after the first begins "And the jurors aforesaid upon their oath aforesaid do further present that" etc.

(*o*) See 2 Hawk. P. C., c. 25, ss. 54 *et seq.*; Archbold, Criminal Pleading, 23rd

Person indicted.

657. The indictment must aver with certainty who is the person indicted. It should set out his christian name and surname, but it is sufficient to give the name by which he is usually known, and if he is known by two names, both may be given (*p*). It is not necessary to give either the "addition" (*i.e.*, occupation) or the place of abode of the person accused (*q*).

If a corporation is indicted, its proper corporate name must be given (*r*).

The inhabitants of a parish who are indicted for non-repair of a highway or of a county for non-repair of a bridge may be indicted under the name of the inhabitants of the particular parish or of the particular county (*s*).

If the name of the person accused is unknown, he must be identified in some way, *e.g.*, by describing him as "a person whose name is to the jurors unknown, but who is personally brought before the jurors by the keeper of the prison." It is not sufficient to describe such a person as one whose name is to the jurors unknown (*t*).

Person injured.

658. If the alleged crime is one that has been committed against the person or property of some one, the name and surname of the person injured should be stated with reasonable certainty (*a*).

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ed., 55. No indictment is insufficient for want of any matter unnecessary to be proved, or for the omission of such formal expressions as "as appears by the record," or "with force and arms," or "against the peace," or for the insertion of the words "against the form of the statute" instead of "against the form of the statutes," or *vice versâ*, or because a person mentioned in an indictment is designated by a name of office or other descriptive appellation instead of his proper name, or for omitting to state the time at which an offence was committed, in a case when time is not of the essence, or for stating the time imperfectly, or for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened, or for want of a proper or perfect venue or of a proper or formal conclusion, or for want of or imperfection in the addition of any defendant, or for the want of the statement of the value or price of any matter, or the amount of damage, injury, or spoil in any case where the value or price or the amount of damage, injury, or spoil is not of the essence of the offence (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24).

(*p*) 2 Hale, P. C. 175; see Bro. Abr. tit. Misnomer, 47. But an error in the name or surname, or in both, may be amended (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 1).

(*q*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24; Statute Law Revision Act, 1883 (46 & 47 Vict. c. 49), s. 4, repealing the Statute of Additions (1 Hen. 5, c. 5).

(*r*) An error in the name may be amended (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 1).

(*s*) 2 Roll. Abr. Indictment (L.) 79; 2 Hawk. P. C., c. 25, s. 68.

(*t*) *Anon.* (1822), Russ. & Ry. 489. It seems that the provisions of s. 24 of the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), allowing the designation of any person mentioned in an indictment "by a name of office or other descriptive appellation" do not apply to the case of a person indicted; and that a person indicted cannot be so designated, see *R.* v. *Great Western Rail. Co.* (*Directors*) (1888), 20 Q. B. D. 410. If the name of the person indicted is misdescribed, the mistake may be amended, but only by the court that tries the indictment (*R.* v. *Great Western Rail. Co.* (*Directors*), *supra*).

(*a*) 2 Hawk. P. C., c. 25, ss. 71, 72; *R.* v. *Cardigan* (*Earl*) (1841), 4 State Tr. (N. S.) 601, H. L. The name given should be either the real name of the person injured, or that by which he is known (*R.* v. *Norton* (1823), Russ. & Ry.

SECT. 2. Form of Indictments.

If the name of the person injured is unknown, he may be described as "a person to the jurors aforesaid unknown" (*b*).

In respect of offences against property it is as a general rule essential that the indictment should allege who is the owner of the property, and that the property belongs to someone other than the defendant (*c*).

Allegation of ownership of property.

A mistake in the description of the owner of property may be amended, but, if it is not amended, or if the averment of ownership is omitted altogether in a case when it is essential, the indictment is bad. If the owner of the property is unknown, the indictment should describe the property as belonging to a person to the jurors unknown (*d*).

When necessary to state age.

659. A statement of the age of the person accused or of the person injured is unnecessary (*e*), except where it is an essential ingredient of the particular offence that the person committing the offence or the person injured should be of any particular age (*f*); in such case the indictment and every count thereof must state that the person is of that age (*g*).

Time.

660. It is usual to insert the date on which the crime charged is alleged to have been committed, but it is only necessary to do so where time is of the essence of the offence (*h*). In such case, the

510; *R.* v. *Berriman* (1833), 5 C. & P. 601; *Anon.* (1834), 6 C. & P. 408; *R.* v. *Williams* (1836), 7 C. & P. 298; *R.* v. *Gregory* (1846), 8 Q. B. 508). As to description of the name of a bastard, see *R.* v. *Clark* (1818), Russ. & Ry. 358; *R.* v. *Waters* (1835), 1 Mood. C. C. 457; *R.* v. *Evans* (1839), 8 C. & P. 765; *R.* v. *Stroud* (1842), 2 Mood. C. C. 270; *R.* v. *Scarborough* (1848), 3 Cox, C. C. 72; *R.* v. *Smith* (1833), 1 Mood. C. C. 402. As to description where parent and child have the same name, see *R.* v. *Peace* (1820), 3 B. & Ald. 579. If the person injured has a name of dignity (*e.g.*, if he is a peer or baronet or knight) the name of dignity should be given (see *R.* v. *Pitts* (1839), 8 C. & P. 771; *R.* v. *Graham* (1791), 2 Leach, 547; *R.* v. *Brinklett* (1828), 3 C. & P. 416; *Anon.* (1698), 2 Salk. 451; *R.* v. *Gregory* (1846), 8 Q. B. 508; *R.* v. *Frost* (1855), Dears. C. C. 474). A person may be designated by a name of office or other descriptive appellation instead of by his proper name (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24). A mistake in the name or description of any person named or described in an indictment may be amended by the court that tries the indictment (*ibid.*, s. 1).

(*b*) *R.* v. *Biss* (1839), 2 Mood. C. C. 93; *R.* v. *Hicks* (1840), 2 Mood. & R. 302; *R.* v. *Campbell* (1843), 1 Car. & Kir. 82.

(*c*) 2 Hawk. P. C., c. 25, s. 71. But in an indictment for stealing a will it is not necessary to allege that the will is the property of any person (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 29). In an indictment for arson under ss. 2 and 3 of the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), it is unnecessary to aver to whom the house etc. belongs (*R.* v. *Newboult* (1872), L. R. 1 C. C. R. 344); and see under the specific offences, *post*.

(*d*) It is chiefly in regard to indictments for larceny that questions have arisen with regard to the proper description of the owner of property (see p. 645, *post*).

(*e*) It is not necessary to allege that the person accused is above the age of seven years, for although no person under that age can be convicted of a crime, yet the fact that a person is over that age is not an essential ingredient of any particular offence, but is a condition of liability common to all crimes (see p. 239, *ante*).

(*f*) See Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), ss. 2, 4, 5, 6; Children Act, 1908 (8 Edw. 7, c. 67), ss. 12, 16, 17.

(*g*) *R.* v. *Martin* (1840), 9 C. & P. 215; *R.* v. *Waters* (1848), 1 Den. 356.

(*h*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24. Time is of the

day of the month or year, and sometimes the time of day, when the alleged offence was committed must be alleged (*i*).

Place.

661. It is not necessary to state the place where an offence is alleged to have been committed except in the case of crimes in respect of which a local description is required (*k*), but it is usual to do so in order that the taxing officer may see upon what county or borough treasurer the order for payment of the costs should be made.

Facts and intent.

662. The facts, circumstances, and intent which constitute the alleged offence must be set out with such certainty that the defendant may be able to judge whether they constitute an indictable offence or not, and to decide whether to plead to the indictment or to move to quash it, and that he may know what the particular charge against him is and whether he has been previously convicted or acquitted of the same charge, and that he may

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essence of the offence—(1) when an act is only criminal if done after or within a certain time after some other act or event, *e.g.*, some of the offences under the Debtors Act, 1869 (32 & 33 Vict. c. 62), Part II., s. 11 (see title BANKRUPTCY, Vol. II., p. 345); (2) when it is an essential ingredient of a particular offence that certain consequences should follow a particular act—*e.g.*, in murder and manslaughter it is essential to prove that the death of the person alleged to be murdered or killed took place within a year and a day from the time when the act which caused the death was committed (in such a case the time stated in the indictment should be the day on which such act was done); (3) when it is an essential ingredient of a particular offence that the alleged act or acts should be committed between certain hours of the day, *e.g.*, burglary, night poaching, making signals to smuggling vessels; (4) when the prosecution for a particular crime must be commenced within a certain time of the commission of the alleged criminal act (see p. 294, *ante*).

(*i*) In an indictment for burglary it is sufficient to allege that the act was committed "in the night" (1 Hale, P. C. 549; 2 Hawk. P. C., c. 25, ss. 76, 77; but see *R.* v. *Waddington* (1771), 2 East, P. C. 513), or even that the offence was committed "burglariously" (*R.* v. *Thompson* (1847), 2 Cox, C. C. 377). So in an indictment for night poaching it is sufficient to allege that the offence was committed by night without mentioning the hour (*Davies* v. *R.* (1829), 10 B. & C. 89). As to the averment of time in an indictment for an offence for the prosecution of which a time is limited, see *R.* v. *Brown* (1828), 1 Mood. & M. 163. As to indictments for larceny or embezzlement where several distinct acts, not exceeding three, against the same person may be joined together in one indictment, if committed within six months from the first to the last of these acts, see Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 5, 6, 71; *R.* v. *Nicholls* (1904), 68 J. P. 452, C. C. R.; *R.* v. *Lonsdale* (1864), 4 F. & F. 56, and p. 648, *post*.

(*k*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 23. Local description is required in indictments for keeping a disorderly house (see p. 541, *post*); burglary (*R.* v. *St. John* (1839), 9 C. & P. 40); housebreaking (*R.* v. *Bullock* (1831), 1 Mood. C. C. 324, n.); sacrilege; stealing in a dwelling-house (*R.* v. *Napper* (1824), 1 Mood. C. C. 44); hunting or stealing deer; night poaching (*R.* v. *Ridley* (1823), Russ. & Ry. 515); riotous demolition of houses etc. (*R.* v. *Richards* (1832), 1 Mood. & R. 177); malicious injury to sea banks etc.; maliciously firing a dwelling-house (*R.* v. *Woodward* (1831), 1 Mood. C. C. 323); forcible entry (*R.* v. *Cranage* (1712), 1 Salk. 385); nuisances to highways (*R.* v. *Steventon* (*Inhabitants*) (1843), 1 Car. & Kir. 55); see Archbold, Criminal Pleading, 23rd ed., 68, where it is stated that the practice at the Central Criminal Court is to insert the parish in all indictments (see *R.* v. *Connop* (1836), 4 Ad. & El. 942; and Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 4).

SECT. 2. Form of Indictments.

be able to prepare a defence to meet it, and that the court may know what judgment to pronounce in case of conviction (*l*).

Where an indictment is in general terms, the court may order the prosecution to deliver to the accused particulars of the matters alleged in the indictment (*m*).

An indictment for a statutory offence must allege with certainty that the defendant committed or omitted the acts the commission or omission of which is prohibited by statute, and did so in the circumstances and with the intent mentioned in the statute (*n*).

Negativing exemptions.

If a statute which creates or defines an offence contains in the enacting clause an exception exempting certain cases from its operation, an indictment for the offence must aver that the particular act or acts alleged were not within the exemption, but if the exception comes in by way of proviso, whether in the same section or in another part of the statute, and the proviso is not in the nature of an exception which is incorporated directly or by reference with the enacting clause, it is not necessary to negative the proviso (*n*).

(*l*) See Co. Litt. 303 a; *R.* v. *Horne* (1777), Cowp. 672; *R.* v. *Rowed* (1842), 3 Q. B. 180; *White* v. *R.* (1876), 13 Cox, C. C. 318; *Taylor* v. *R.*, [1895] 1 Q. B. 25; *R.* v. *Aspinall* (1876), 2 Q. B. D. 48, C. A., at p. 56; *R.* v. *Stroulger* (1886), 17 Q. B. D. 327, C. C. R. The degree of particularity required varies with the nature of the offence (see under specific crimes, *post*). In an indictment for treason the overt acts must be set out (see p. 456, *post*). In an indictment for embezzlement the sums or property embezzled must be particularly described. In an indictment for obtaining property by false pretences the property obtained must be particularly described and the false pretences must be set out (see p. 690, *post*); but in an indictment under the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 95, for receiving goods knowing them to have been obtained by false pretences or under the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 13 (1), for obtaining credit under false pretences the false pretences need not be set out (*Taylor* v. *R.*, [1895] 1 Q. B. 25; *R.* v. *Watkinson* (1872), 12 Cox, C. C. 271, C. C. R.; *R.* v. *Pierce* (1887), 16 Cox, C. C. 213, C. C. R.). In some cases the alleged offence may be described in general terms, *e.g.*, a person may be indicted for barratry, and for keeping a common gaming-house or bawdy-house (*I'Anson* v. *Stuart* (1787), 1 Term Rep. 748, at p. 752), or for conspiracy to defraud a person of "divers goods" (*Anon.* (1819), 1 Chit. 698; *R.* v. *Gill* (1818), 2 B. & Ald. 204). An indictment which alleges that the defendant conspired "with divers other persons" must either allege that such persons are unknown or must give their names (*R.* v. *Perrin* (1908), 72 J. P. 144).

(*m*) Particulars have been ordered in the case of the following offences: barratry (*I'Anson* v. *Stuart*, *supra*, at p. 754); nuisance (*R.* v. *Curwood* (1835), 3 Ad. & El. 815); obstructing a highway (*R.* v. *Downshire* (*Marquis*) (1835), cited 3 Ad. & El. 816); embezzlement (*R.* v. *Hodgson* (1828), 3 C. & P. 422; *R.* v. *Bootyman* (1832), 5 C. & P. 300); conspiracy (*R.* v. *Hamilton* (1836), 7 C. & P. 448; *R.* v. *Rycroft* (1852), 6 Cox, C. C. 76; *R.* v. *Probert* (1852), Dears. C. C. 30, at p. 32, n.; *R.* v. *Stapylton* (1857), 8 Cox, C. C. 69).

(*n*) But see *R.* v. *James*, [1902] 1 K. B. 541, C. C. R., where it was held that in an indictment against a wife for stealing the goods of her husband it was not necessary to aver that the defendant was the wife of the prosecutor or that she took the goods which were the subject-matter of the charge when leaving or deserting or about to leave or desert her husband, although the statute (Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 12, 16) only makes the taking of such goods an offence by the wife when she is leaving etc. her husband. An indictment for the misdemeanour of receiving goods stolen by a wife from her husband need not allege that the goods were stolen by the wife from her husband; it is enough to allege that they were stolen (*R.* v. *Payne*, [1906] 1 K. B. 97, C. C. R. As to negativing exemptions, see *R.* v. *Earnshaw* (1812), 15 East, 456; *R.* v. *Jarvis* (1757), 1 East, 643, n., 646, n.; *R.* v. *Hall* (1786), 1 Term Rep. 320; *R.* v. *Pratten* (1796), 6 Term Rep. 559; *R.* v. *Baxter*

SECT. 2. Form of Indictments.

Where any particular intent is a necessary ingredient of an offence, the intent must be stated in the indictment (*o*).

Where words, written or spoken, are of the essence of an offence, they must be set out verbatim in the indictment, except in the case of an obscene libel (*p*).

Describing property.

Property which is the subject-matter of an alleged offence must be described in an indictment by the appropriate name (*q*).

It is not necessary to state the value of any matter or thing mentioned in an indictment or the amount of damage, injury, or spoil, except where such value is of the essence of the offence (*r*).

(1792), 5 Term Rep. 83; *R.* v. *Matters* (1818), 1 B. & Ald. 362; *R.* v. *Pearce* (1810), Russ. & Ry. 174; *R.* v. *Robinson* (1817), Russ. & Ry. 321; *R.* v. *Palmer* (1773), 1 Leach, 102; *R.* v. *James*, [1902] 1 K. B. 540, C. C. R.; *R.* v. *Audley*, [1907] 1 K. B. 383, C. C. R.). If a statute makes the doing of an act "without lawful authority or excuse" criminal, it is sufficient to aver that it was done without lawful authority (*R.* v. *Harvey* (1871), L. R. 1 C. C. R. 284).

(*o*) *E.g.*, in an indictment for forgery or for obtaining property by false pretences it must be alleged that the defendant did the act charged with intent to defraud (see *R.* v. *James* (1871), 12 Cox, C. C. 127); so in an indictment for setting fire to houses etc. under the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 3, an intent to defraud or injure, as the case may be, must be alleged; but in none of these cases is it necessary to allege an intent to defraud or injure any particular person (see Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 88 (false pretences); Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 60 (setting fire to houses etc.); as to forgery, see Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 44 (forgery)). In an indictment for burglary it is necessary to allege either an entry with intent to commit a felony (see Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 51), *e.g.*, "with intent the goods and chattels of one John Smith in the said dwelling-house there being feloniously and burglariously to steal, take and carry away"); or the commission of a felony in a dwelling-house and the breaking out of the house in the night; so as to breaking and entering a house with intent to commit a felony therein (see Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 57), or being found by night in any dwelling-house with intent to commit any felony therein, or being found by night armed etc., with the intent to break into a dwelling house etc. (see Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 58).

(*p*) See Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), s. 7; and see p. 538, *post*).

(*q*) Great particularity and minuteness of statement as to the description of personal chattels in an indictment were formerly required (see *R.* v. *Cook* (1774), 2 East, P. C. 616; *R.* v. *Edwards* (1823), Russ. & Ry. 497; *R.* v. *Halloway* (1823), 1 C. & P. 127; *R.* v. *Loom* (1827), 1 Mood. C. C. 160; *R.* v. *Puddifoot* (1829), 1 Mood. C. C. 247; *R.* v. *Birket* (1830), 4 C. & P. 216; *R.* v. *Tate* (1833), 1 Lew. C. C. 234; *R.* v. *Cox* (1844), 1 Car. & Kir. 494; *R.* v. *Lonsdale* (1864), 4 F. & F. 56). But nearly all these cases were before the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 1, which gave power to amend a misdescription of property, and their importance has been diminished by that Act. Moreover, it is doubtful whether these older cases would be followed now, even if there were no amendment (see *R.* v. *Stride and Millard*, [1908] 1 K. B. 617). But a substantial misdescription of property, where a description is essential, will even now, unless amended, make an indictment bad (see *R.* v. *Satchwell* (1872), L. R. 2 C. C. R. 21, where a conviction was quashed because in an indictment under the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 17, for setting fire to a stack of corn the evidence showed that what the defendant set fire to was a quantity of straw on a lorry). Thus an indictment for larceny of wild animals or of the produce of wild animals must expressly or by implication allege that such animals or produce have been reduced into possession (see *R.* v. *Stride and Millard*, *supra*), and the mere allegation that the animals etc. are the goods and chattels of the prosecutor is not a sufficient allegation of such reduction into possession (*R.* v. *Stride and Millard*, *supra*; see *R.* v. *Rough* (1779), 2 East, P. C. 607).

(*r*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24, *e.g.*, under

SECT. 2. Form of Indictments.

Allegation must be positive.

663. All the material allegations in an indictment must be positive and direct and free from duplicity and repugnancy (*s*). Thus, an indictment must not charge a defendant with one or other of two offences or with acting in one or other of two capacities, and must not be capable of being construed as applying to two different offences without stating which one is charged (*t*). An indictment must not be double, *i.e.*, no single count must charge the defendant with two or more offences (*u*). But in respect of one transaction a defendant may be charged with committing several offences, *e.g.*, with uttering a number of forged instruments, if they were all uttered at the same time (*x*). But the omission to aver

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s. 60 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), under ss. 20, 21, 22, 51 of the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), and under s. 11 (4), (5) of the Debtors Act, 1869 (32 & 33 Vict. c. 62); see specific offences, *post*. Where a written instrument is the subject-matter of the alleged offence, it is sufficient to describe such instrument by any name or designation by which it may be usually known, or by the purport thereof, without setting out any copy or facsimile or any part thereof (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), ss. 5, 7; Forgery Act, 1861 (24 & 25 Vict. 98), ss. 42, 43). It is sufficient to describe money or a bank note as money, without specifying the particular coin or bank note (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 18; and see *R.* v. *West* (1856), Dears. & B. 109; *R.* v. *Gumble* (1872), L. R. 2 C. C. R. 1). And see as to an indictment for the embezzlement of money, Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 71; *R.* v. *Keena* (1868), L. R. 1 C. C. R. 113; and p. 650, *post*.

It seems doubtful whether Arabic figures to express numbers are allowable in an indictment; the older authorities state that numbers must be expressed in words or Roman numerals (see 2 Hale, P. C. 170; *R.* v. *Haddock* (1737), Andr. 137; *R.* v. *Philips* (1720), 1 Stra. 261); but the use of Arabic figures is not now unusual, and is at the most a formal defect which is amendable and of which advantage cannot be taken after plea (see *R.* v. *Price* (1900), 17 T. L. R. 80; *R.* v. *Edwards* (1901), Archbold, Criminal Pleading, 23rd ed., 82).

(*s*) The older cases lay down that an indictment must state positively that the defendant did the act or acts which constitute the crime, and that acts must not be stated by way of recital or by implication (2 Hawk. P. C., c. 25, s. 60; *R.* v. *Whitehead* (1693), 1 Salk. 371; *R.* v. *Goddard* (1703), 3 Salk. 171; *R.* v. *Crowhurst* (1724), 2 Ld. Raym. 1363; *R.* v. *Askman* (1711), 1 Sess. Cas. (K. B.) 159). Facts which are adjuncts of the material facts may be stated by implication (see *R.* v. *Johnson* (1621), 2 Roll. Rep. 225; *R.* v. *Boyall* (1759), 2 Burr. 832; *R.* v. *Bootie* (1759), 2 Burr. 864; *R.* v. *Higginson* (1760), 2 Burr. 1232; *R.* v. *Somerton* (1827), 7 B. & C. 463; *R.* v. *Long* (1604), 5 Co. Rep. 120 a, 121 b; *R.* v. *Lawley* (1731), 2 Stra. 904; *R.* v. *Aylett* (1785), 1 Term Rep. 63, 70; *R.* v. *Ryland* (1867), L. R. 1 C. C. R. 99). A failure to comply with the rule against statements by way of recital or implication would probably be now considered a mere formal amendable defect of which advantage could not be taken after plea.

(*t*) *Smith* v. *Mall* (1622), 2 Roll. Rep. 263; *R.* v. *Stocker* (1695), 1 Salk. 342, 371; *R.* v. *Stoughton* (1731), 2 Stra. 900; *R.* v. *Flint* (1736), Lee *temp.* Hard. 370; *R.* v. *Morley* (1827), 1 Y. & J. 221; *R.* v. *Marshall* (1827), 1 Mood. C. C. 158; *R.* v. *Edmondes* (1895), 59 J. P. 776.

(*u*) *R.* v. *Devett* (1838), 8 C. & P. 639.

(*x*) *R.* v. *Thomas* (1800), 2 East, P. C. 934; with robbing two persons at the same time (*R.* v. *Giddins* (1842), Car. & M. 634); beating two persons at the same time, libelling two persons in one publication (*R.* v. *Benfield* (1793), 2 Burr. 980, 983, 984); and one endeavouring to procure the commission of two offences (*R.* v. *Fuller* (1797), 1 Bos. & P. 180). In burglary a person may be charged in the same count with breaking and entering a house with intent to commit a felony and with committing the felony; so a person may be charged in the same count with assaulting and also with unlawful carnal knowledge of a girl (*R.* v.

a matter not necessary to be proved or a defect or mistake in the manner of stating any such matter does not make an indictment bad (*a*).

Use of special words.

664. In indictments for certain crimes the use of certain words is essential, *e.g.*, an indictment for treason must aver that the alleged acts were done "traitorously"; for murder, that the defendant "feloniously and of his malice aforethought did kill and murder" etc.; for manslaughter, that the defendant "feloniously did kill and slay"; for rape, that the defendant "feloniously did ravish"; for larceny, that the defendant "feloniously did take and carry away"; for burglary, that the defendant "feloniously and burglariously did break and enter" etc. "with intent to" (commit some named felony); in a statutory forgery, that the defendant "feloniously did forge" etc. "with intent to defraud." Every indictment for a felony must aver that the alleged act or acts was or were done feloniously, and if the word "feloniously" is omitted, the indictment, it seems, is bad (*b*); and every indictment for a misdemeanour must aver that the alleged act or acts was or were done "unlawfully." An indictment for a misdemeanour which contains the word "feloniously" is, it seems, bad (*c*).

Guthrie (1870), L. R. 1 C. C. R. 241). A defendant may be charged in the same count with publishing a libel and causing it to be published (*R.* v. *Bradlaugh* (1883), 15 Cox, C. C. 217). Several overt acts of treason may be laid in one count (Kel. 8). A defendant may be charged with "destroying, defacing, and injuring" a register (*R.* v. *Bowen* (1844), 1 Den. 22). A count charging a defendant with "having used violence to or intimidated" is bad (*R.* v. *Edmondes* (1895), 59 J. P. 776). Separate acts of larceny or embezzlement against the same person may, if committed within six months from the first to the last of such acts, be joined together in one count (*R.* v. *Nicholls* (1904), 68 J. P. 452, C. C. R.); but the better course is to charge them in different counts (see *R.* v. *Balls* (1871), L. R. 1 C. C. R. 328; *R.* v. *Rye* (1909), 2 Cr. App. Rep. 155). If one material part of an indictment is repugnant to or inconsistent with another material part, the whole is void (*R.* v. *Carter* (1800), 2 East, P. C. 985; *R.* v. *Gill* (1821), Russ. & Ry. 431; *R.* v. *Stevens and Agnew* (1804), 5 East, 244; *R.* v. *Craddock* (1850), 2 Den. 31).

(*a*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24. In an indictment against a person who has claimed to be tried by a jury under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 17, it is not necessary to aver that the claim was made (*R.* v. *Chambers* (1896), 18 Cox, C. C. 401). Every fact and circumstance in an indictment which is not a necessary ingredient in the offence charged may be treated as surplusage and need not be proved, and any mistake in stating such matter is immaterial (*R.* v. *Jones* (1831), 2 B. & Ad. 611; *R.* v. *Holt* (1793), 2 Leach, 593; *R.* v. *Radley* (1849), 1 Den. 450; *Ryalls* v. *R.* (1848), 11 Q. B. 781, Ex. Ch.; *R.* v. *Godfrey* (1858), Dears. & B. 426; *R.* v. *Huntley* (1860), Bell, C. C. 238; *R.* v. *Hodgkiss* (1869) L. R. 1 C. C. R. 212; *A.-G. of New South Wales* v. *Macpherson* (1870), L. R. 3 P. C. 268; *R.* v. *Parker* (1870), L. R. 1 C. C. R. 225). The words usually inserted at the close of an indictment "against the peace of our sovereign lord the King" or "against the forms of the statute (or statutes) in such case made and provided" are surplusage, and their omission will not make an indictment bad (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24; *Castro* v. *R.* (1881), 6 App. Cas. 229). So as to the words "for our sovereign lord the King" at the beginning of an indictment after "The jurors" (*R.* v. *Turner* (1839), 2 Mood. & R. 214).

(*b*) *R.* v. *Crighton* (1803), Russ. & Ry. 62.

(*c*) *R.* v. *Walker* (1834), 6 C. & P. 657; but see *R.* v. *Carradice* (1811), Russ. & Ry. 205. Matter of inducement or introductory matter in an indictment does not need to be stated with the same certainty as matter which is of the essence of the offence (*R.* v. *Wright* (1671), 1 Vent. 169; *R.* v. *Bidwell* (1847), 1 Den.

SECT. 2, Form of Indictments.

If more persons than one join together in the commission of an offence, they may be indicted for it jointly in one indictment or separately in separate indictments (*d*).

SUB-SECT. 2.—*Joinder of Offences.*

Joinder of several defendants.

Joinder of several offences.

665. An indictment may contain one or more counts, and except where one of the counts alleges a previous conviction of the defendant, or where the prosecutor is put to his election on which count he will proceed, the defendant may be arraigned and evidence may be given on all the counts at the same trial, but for the purposes of verdict and judgment each count is to be treated as a separate indictment (*e*).

Separate treasons and separate misdemeanours.

Separate offences cannot be alleged in one count of an indictment (*f*), but separate treasons, or separate misdemeanours, may be lawfully charged in separate counts of the same indictment (*g*).

Felony and misdemeanour.

A count for treason or felony cannot be lawfully joined in the same indictment with a count for misdemeanour (*h*).

In an indictment for high treason different species of treason may be joined in different counts (*i*) ; the same course may be followed in an indictment for treason felony (*k*).

Different felonies.

At common law there was no legal objection to several different felonies being charged in different counts of one indictment (*a*), but it is a well-established rule of practice that, if different felonies, not being different ways of describing the same act, are charged in separate counts of one indictment, the judge will put the prosecutor to his election to proceed and offer evidence on one charge only (*b*).

Where the same transaction gives rise to several felonies, or where the same act is charged in different counts as constituting different crimes, or where the joinder of different felonies is expressly authorised by statute, the prosecutor will not be put to his election (*c*).

222; *R.* v. *Wade* (1831), 1 B. & Ad. 861; *R.* v. *Soper* (1825), 3 B. & C. 857; *R.* v. *Sainsbury* (1791), 4 Term Rep. 451 ; *R.* v. *Westley* (1859), Bell, C. C. 193; *R.* v. *Jameson*, [1896] 2 Q. B. 425).

(*d*) *R.* v. *Atkinson* (1706), 1 Salk. 382; *R.* v. *Trafford* (1831), 1 B. & Ad. 874; *Young* v. *R.* (1789), 3 Term Rep. 98; *R.* v. *Benfield* (1793), 2 Burr. 980, 985. But two or more persons cannot be jointly indicted for perjury (*R.* v. *Philips* (1731), 2 Stra. 921). As to principals and accessories, see p. 257, *ante*.

(*e*) *Latham* v. *R.* (1864), 5 B. & S. 635; *Castro* v. *R.* (1881), 6 App. Cas. 229. And see p. 334, *ante*.

(*f*) See p. 340, *ante*.

(*g*) But the prosecutor may be put to his election in such a case to proceed on one or some of such counts.

(*h*) *Castro* v. *R.* (1881), 6 App. Cas. 244.

(*i*) See 2 Chitty, Criminal Law, 67, 73.

(*k*) Treason Felony Act, 1848 (11 & 12 Vict. c. 12), s. 5.

(*a*) *Castro* v. *R.* (1881), 6 App. Cas. 229, *per* Lord BLACKBURN, at p. 244.

(*b*) *Ibid.*; *Young* v. *R.* (1789), 3 Term Rep. 98, 106; *R.* v. *Heywood* (1864), Le. & Ca. 451; *O'Connell* v. *R.* (1844), 5 State Tr. (N. S.) 1, 784; *R.* v. *Mitchel* (1848), 6 State Tr. (N. S.) 599, C. C. R. See *R.* v. *Rye* (1909), 2 Cr. App. Rep. 155; *R.* v. *Elliott*, [1908] 2 K. B. 452, C. C. A.

(*c*) *R.* v. *Egginton* (1801), 2 Bos. & P. 508 ; *R.* v. *Dunn* (1826), 1 Mood. C. C. 146; *R.* v. *Hinley* (1843), 2 Mood. & R. 524; *R.* v. *Strange* (1837), 8 C. & P. 172; *R.* v. *Trueman* (1839), 8 C & P. 727; *R.* v. *Jones* (1839), 8 C. & P. 776, C. C. R.; *Campbell* v. *R.* (1846), 11 Q. B. 799; *R.* v. *Bleasdale* (1848), 2 Car. & Kir. 765; *R.* v. *Shepherd* (1868), L. R. 1 C. C. R. 118; *R.* v. *Firth* (1869),

The joinder of a count for felony with a count for misdemeanour in one indictment makes the indictment bad (*d*).

Several different misdemeanours may be charged in different counts of the same indictment, but if the charges relate to different acts and the joinder of such charges embarrasses the defendant, the prosecutor will be put to his election upon which charge he will proceed (*e*).

Different misdemeanours.

Different misdemeanours should not be charged against different defendants in one indictment, *e.g.*, a charge of a conspiracy between two persons should not be joined with a charge of a conspiracy between one of such two persons and a third person (*f*).

Verdict should be taken separately on each count.

If several counts are joined in one indictment, a verdict should be taken separately on each count, because if there is a general verdict and a general judgment on the whole indictment, and some of the counts should be decided to be bad, the whole judgment is vitiated (*g*).

SUB-SECT. 3.—*Defective Averments*

When defect in an indictment is cured by verdict.

666. Where an offence has been created by statute, or subjected to a greater degree of punishment by statute, the indictment is

L. R. 1 C. C. R. 172; *R.* v. *Henwood* (1870), 11 Cox, C. C. 526, C. C. R. See *R.* v. *Rye* (1909), 2 Cr. App. Rep. 155. If a defendant is charged as an accessory before the fact in one count and as accessory after the fact in another count to the same felony, the prosecutor will not be put to his election (*R.* v. *Blackson* (1837), 8 C. & P. 43; *R.* v. *Mitchel* (1848), 6 State Tr. (N. S.) 599, 620, 621). A defendant may be charged as principal in the first degree in one count and as principal in the second degree in another count (*R.* v. *Gray* (1835), 7 C. & P. 164), or as principal in one count and as accessory after the fact to the same felony in another count (Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 3; *R.* v. *Tuffin* (1903), Archbold, Criminal Pleading, 23rd ed., 89, where *R.* v. *Brannon* (1880), 14 Cox, C. C. 394, to the contrary effect, was not followed. See also *R.* v. *Austin* (1837), 7 C. & P. 796; *R.* v. *Hartall* (1836), 7 C. & P. 475; *R.* v. *Wheeler* (1835), 7 C. & P. 170; *R.* v. *Pulham* (1840), 9 C. & P. 280). A count for feloniously receiving stolen property knowing it to be stolen may be joined with a count for stealing (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 92); and the prosecutor cannot in such a case be put to his election (*ibid.*). But a count for stealing certain property ought not to be joined with a count for stealing the same and other property, and if such counts are joined the prosecutor will be put to his election (*R.* v. *Ward* (1860), 2 F. & F. 19). As to charging different acts of embezzlement and larceny against the same person in one indictment, see Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 5, 6, 71. As to joining different persons as principals and accessories in the same indictment, see pp. 257, 258, *ante*.

(*d*) The challenges and the incidents of the trial are not the same in felony and misdemeanour, and felony and misdemeanour cannot be tried together (*Castro* v. *R.* (1881), 6 App. Cas. 229, *per* Lord BLACKBURN, at p. 244). But if an indictment contains a count for felony and a count for misdemeanour, and the prisoner is convicted of either the felony or the misdemeanour and acquitted of the other charge, the conviction is good (*R.* v. *Ferguson* (1855), Dears. C. C. 427; *R.* v. *Jones* (1839), 2 Mood. C. C. 94).

(*e*) *Young* v. *R.* (1789), 3 Term Rep. 98, 105, 106; *R.* v. *Kingston* (1806), 8 East, 41; *R.* v. *Jones* (1809), 2 Camp. 131; *R.* v. *Johnson* (1815), 3 M. & S. 539; *R.* v. *Towle* (1816), Russ. & Ry. 314; *R.* v. *Murphy* (1837), 8 C. & P. 297; *R.* v. *Bassett* (1843), 1 Cox, C. C. 51; *R.* v. *Fussell* (1848), 6 State Tr. (N. S.) 723; *R.* v. *Braun* (1862), 9 Cox, C. C. 284; *R.* v. *Barry* (1865), 4 F. & F. 389; *R.* v. *Burch* (1865), 4 F. & F. 407; *Castro* v. *R.* (1881), 6 App. Cas. 229, 245; *R.* v. *King*, [1897] 1 Q. B. 214, 216, C. C. R.

(*f*) 1 Chitty, Criminal Law, 254; *R.* v. *Kingston* (1806), 8 East, 41; *R.* v. *Warren, Times*, October 31, 1907, p. 2; Roscoe, Criminal Evidence, 13th ed., 363.

(*g*) See *O'Connell* v *R.* (1844, 5 State Tr. (N. S.) 1.

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sufficient after verdict if it describes the offence in the words of the statute (*h*).

If an averment in an indictment for such an offence is imperfectly stated and the jury find a verdict of guilty, and if it appears to the court that the verdict could not have been found without proof of the averment, then the defective averment is cured by verdict (*i*).

After verdict a defective averment in one count of an indictment may be aided by reference to another count (*j*).

But the verdict will not cure the total omission of an essential averment (*k*).

SUB-SECT. 4.—*Amendment.*

Amendment.

667. At common law an indictment could not be amended except by the grand jury that found it (*l*). Limited powers to amend indictments in cases of misnomer have been conferred by statute (*m*) on the court which tries the indictment. Further powers of amendment have been conferred by statute (*n*) in case of a variance between any matter in writing or print produced in evidence and the recital or setting forth of such matter in the indictment (*o*). Further powers of amendment have been conferred by statute (*p*) as regards any variance between the statement in an indictment for felony or misdemeanour and the evidence offered in proof of the statement in the name of any county or place mentioned in the indictment; in the name or description of any person or persons or body politic or corporate stated to be the owner or owners of any property which is the subject of any offence charged, or to be injured, or intended to be injured, by the commission of such offence; or in the christian name or surname or both the christian name and surname or other description of any person or persons named or described in the indictment; or in the name or description of any matter or thing, or

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(*h*) Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 21. See *R.* v. *Barton* (1826), 1 Mood. C. C. 141; *R.* v. *Turner* (1829), 1 Mood. C. C. 239; *R.* v. *Warshaner* (1836), 1 Mood. C. C. 466; *R.* v. *Ryan* (1837), 2 Mood. C. C. 15; *R.* v. *Martin* (1838), 8 Ad. & El. 481; *R.* v. *Bent* (1845), 1 Den. 157; *Hamilton* v. *R.* (1846), 9 Q. B. 271; *Douglas* v. *R.* (1847), 13 Q. B. 74; *R.* v. *Bowen* (1849), 13 Q. B. 790; *R.* v. *Rowlands* (1851), 2 Den. 364; *Nash* v. *R.* (1864), 4 B. & S. 935; *R.* v. *Harvey* (1871), L. R. 1 C. C. R. 284; *R.* v. *Goldsmith* (1873), L. R. 2 C. C. R. 74; *Heymann* v. *R.* (1873), L. R. 8 Q. B. 102; *Taylor* v. *R.*, [1895] 1 Q. B. 25.

(*i*) *Heymann* v. *R.* (1873), L. R. 8 Q. B. 102; *R.* v. *Goldsmith* (1873), L. R. 2 C. C. R. 74; *R.* v. *Aspinall* (1876), 2 Q. B. D. 48, C. A.; *R.* v. *Stroulger* (1886), 17 Q. B. D. 327, C. C. R.; *Taylor* v. *R.*, [1895] 1 Q. B. 25.

(*j*) *R.* v. *Waters* (1848), 1 Den. 356; *R.* v. *Waverton* (*Inhabitants*) (1851), 17 Q. B. 562.

(*k*) Archbold, Criminal Pleading, 23rd ed., 85.

(*l*) *R.* v. *Wilkes* (1770), 19 State Tr. 1075, at pp. 1120—1121.

(*m*) Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 19. This statute also gave power to amend a wrong "addition" or "want of addition," but want of or imperfection in the "addition" of a defendant is now immaterial (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24).

(*n*) Criminal Procedure Act, 1848 (11 & 12 Vict. c. 46), s. 4.

(*o*) *Ibid.*; applied to quarter sessions by the Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), s. 10.

(*p*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 1.

in the ownership of any property named or described in the indictment (*a*).

If there is such variance, and the court which tries the indictment considers that it is not material to the merits of the case and that the defendant cannot be prejudiced in his defence on such merits by an amendment, the court may order the indictment to be amended according to the proof, and the trial is to proceed as if the indictment had originally been in the form in which it is after the amendment has been made (*a*).

The only court which can exercise the power of amendment is the court that tries the indictment (*b*).

SECT. 3.—*Finding of an Indictment by a Grand Jury.*

Drafting of bill of indictment.

668. A bill of indictment is generally drawn for the assizes by the clerk of indictments, and for quarter sessions by the clerk of the peace, but in cases of difficulty it is drawn by counsel (*c*).

(*a*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), ss. 1, 2, 3. The amendment must be made before the case goes to the jury (*R.* v. *Frost* (1855), Dears. C. C. 474; *R.* v. *Larkin* (1854), Dears. C. C. 365; *R.* v. *Fullarton* (1853), 6 Cox, C. C. 194; *R.* v. *Rymes* (1853), 3 Car. & Kir. 326). When an amendment has been made, the amendment cannot be amended, and the original indictment cannot be reverted to in its unamended form (*R.* v. *Barnes* (1866), L. R. 1 C. C. R. 45; *R.* v. *Pritchard* (1861), Le. & Ca. 34). The following are instances where indictments can be amended: *R.* v. *Westley* (1859), Bell, C. C. 193 (erroneous and unnecessary statement of time of passing of an Act of Parliament); *R.* v. *Sturge* (1854), 3 E. & B. 734 (misdescription of one of the termini of a footway); *R.* v. *Sutton* (1877), 13 Cox, C. C. 648 (misdescription of occupation of field); *R.* v. *Vincent* (1852), 2 Den. 464, and *R.* v. *Marks* (1866), 10 Cox, C. C. 367 (misdescription of ownership of stolen property and see *R.* v. *Murray*, [1906] 2 K. B. 385, C. C. R.; *R.* v. *Gumble* (1872), L. R. 2 C. C. R. 1 (misdescription of stolen property); *R.* v. *Neville* (1852), 6 Cox, C. C. 69 (misdescription of property destroyed); *R.* v. *Western* (1868), L. R. 1 C. C. R. 122 (misdescription of tribunal before which perjury is alleged to have been committed); *R.* v. *Tymms* (1870), 11 Cox, C. C. 645 (amendment of description of summons on the hearing of which perjury was alleged to have been committed); *R.* v. *Welton* (1862), 9 Cox, C. C. 297 (failure to prove alleged name of child murdered); *R.* v. *Byers* (1907), 71 J. P. 205 (misdescription in name of child in respect of whose funeral a false pretence was alleged to have been made). See *R.* v. *Winch* (1855), 6 Cox, C. C. 523; *R.* v. *Smith* (1858), 1 F. & F. 36; *R.* v. *Dukinfield* (*Inhabitants*) (1863), 4 B. & S. 158. But an amendment will not be made when the effect of the amendment would be to alter the nature or quality of the crime charged, or to substitute a charge of one offence for another (*R.* v. *Benson*, [1908] 2 K. B. 270, C. C. R.), or to alter a felony into a misdemeanour (*R.* v. *Wright* (1860), 2 F. & F. 320), or a misdemeanour into a felony (*R.* v. *Shott* (1851), 3 Car. & Kir. 206), or to substitute a different allegation of false pretences from that set out in the indictment (*R.* v. *Bailey* (1852), 6 Cox, C. C. 29), or to add an essential averment, *e.g.*, "with intent to defraud," the omission of which makes the indictment bad (*R.* v. *James* (1871), 12 Cox, C. C. 127); see, too, *R.* v. *Lallement* (1853), 6 Cox, C. C. 204; *R.* v. *Davison* (1855), 7 Cox, C. C. 158; *R.* v. *Garnham* (1861), 8 Cox, C. C. 451; *R.* v. *Robinson* (1864), 4 F. & F. 43. As to amending a coroner's inquisition, see Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 20; and *R.* v. *Great Western Rail. Co.* (*Directors*) (1888), 20 Q. B. D. 410.

(*b*) *R.* v. *Great Western Rail. Co.* (*Directors*) (1888), 20 Q. B. D. 410.

(*c*) The fee of the clerk of indictments or clerk of the peace for drawing an indictment in a case of felony is limited to two shillings, see stat. 10 Will. 3, c. 12, ss. 7, 8.

SECT. 3. Finding of an Indictment by a Grand Jury.

It is engrossed on parchment, and the names of the witnesses whom it is intended to examine before the grand jury are indorsed on it (*d*).

Grand jury. Number. Charging the grand jury.

669. A bill of indictment does not become an indictment till it has been presented to and found by a grand jury. The bill must be found by at least twelve grand jurors, and the practice is to call twenty-three (*e*). They are called and sworn immediately after the opening of the court (*f*), and the presiding judge charges them as to the bills of indictment which are to be laid before them; in most cases these bills relate to charges into which the examining justices have already inquired and with respect to which depositions have been taken. The presiding judge advises the grand jury whether the evidence in reference to any particular bill as disclosed in those depositions is sufficient to constitute a *primâ facie* case against the accused, and advises them, if it does, to return a true bill, and, if it does not, to throw out the bill.

Consideration of bills. Evidence.

670. The grand jury, having been charged, retire to a private room, and the bills are laid before them (*g*).

The witnesses in support of each bill are sworn by the foreman or any other member of the grand jury acting on his behalf.

As each witness is sworn and examined, the foreman writes his initials against the name of such witness indorsed on the bill (*h*).

(*d*) An indictment must be in English. As to the form of indictments, see p. 334, *ante*.

(*e*) 2 Hale, P. C. 161; *R.* v. *Clyncard* (1599), 2 Cro. Eliz. 654. There cannot be more than twenty-three (2 Burr. 1088; *R.* v. *Marsh* (1837), 6 Ad. & El. 236, 241). As to the qualification etc. of grand jurors, see title JURIES.

(*f*) As to objections to a grand juror, see 2 Hale, P. C. 155; 2 Hawk. P. C., c. 25, s. 16; *R.* v. *Lewis* (1679), 7 State Tr. 250; *R.* v. *Sheares* (1798), 27 State Tr. 255, 267; *R.* v. *Jackson* (1795), 25 State Tr. 783, 887.

(*g*) Neither counsel nor solicitor for the prosecution is admitted to the room. At the Central Criminal Court no person, other than the witnesses, is allowed to enter the grand jury rooms, except by written order of the clerk of the court or his deputy (Rules, December 12, 1892, r.6). The practice was formerly different; see *Trials of the Regicides* (1660), 5 State Tr. 972; *R.* v. *Shaftesbury* (*Earl*) (1681), 8 State Tr. 771; and Grand Juries Act, 1856 (19 & 20 Vict. c. 54, s. 2).

(*h*) Grand Juries Act, 1856 (19 & 20 Vict. c. 54), ss. 2 3; *R.* v. *Dickinson* (1819), Russ. & Ry. 401. The provisions as to indorsing and initialling the names of the witnesses are, it seems, only directory (*O'Connell* v. *R.* (1844), 11 Cl. & Fin. 155, 405, H. L.). An improper mode of swearing the witnesses before a grand jury will not vitiate the indictment (*R.* v. *Russell* (1842), Car. & M. 247; *R.* v. *Bullard* (1872), 12 Cox, C. C. 353; *O'Connell* v. *R.*, *supra*). A grand jury may present an indictment on their own knowledge and without any evidence (*R.* v. *Russell*, *supra*; *R.* v. *Bullard*, *supra*). If a witness who has been examined before the examining justices is dead or ill, his deposition may be read before the grand jury without proof of the facts evidence of which is required by the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17 (*R.* v. *Clements* (1851), 2 Den. 251; *R.* v. *Bullard* (1872), 12 Cox, C. C. 353; *R.* v. *Gerrans* (1876), 13 Cox, C. C. 158; *R.* v. *Lynch* (1902), Archbold, Criminal Pleading, 23rd. ed., 100). Some judges, however, have required such evidence to be given before a deposition can be read before the grand jury (*R.* v. *Philips* (1858), 1 F. & F. 105; *R.* v. *Wilson* (1874), 12 Cox, C. C. 622; *R.* v. *Beaver* (1866), 10 Cox, C. C. 274; compare *R.* v. *Rendle* (1861), 11 Cox, C. C. 209). The

A witness who refuses to be sworn is punishable for contempt of court (*i*).

SECT. 3. Finding of an Indictment by a Grand Jury.

671. If a majority of the jury, consisting of twelve at least, think that there is "probable evidence" in support of the offence charged in a bill, the words "True bill" are indorsed on the indictment, which is then said to be "found." If they think there is not such evidence, the words "No true bill" are to be indorsed on the indictment, which is then said to be "ignored." In each case the foreman should write his signature on the back of the bill (*k*).

Finding or ignoring of bills.

When one or more bills have been so indorsed, the foreman, accompanied by some of the grand jurors, returns into court with the bills that have been found or ignored and delivers them to the clerk of the court (*l*).

Delivery of bills.

The clerk of the court, addressing the grand jury, then says, "Gentlemen of the grand jury, you find a true bill" (*or* "no true bill") against —— for (the offence charged, *e.g.* murder, larceny etc., or, if it is a misdemeanour, "for a misdemeanour") (*m*).

If any more bills remain to be considered, the grand jury return to their room and proceed with the consideration of the other bills and present them in the manner above described, either singly or in batches.

672. When all the bills have been dealt with, the grand jury either make some presentment on some matter of public concern, or present that they "find nothing presentable except that which they have before presented"; thereupon the presiding judge discharges them from further attendance, and after this no more bills can be found at that session of the court (*n*).

Presentments.

Discharge.

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grand jury cannot hear witnesses for the defence, and neither the defendant nor the wife or husband of the defendant can give evidence before them under the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36) (*R.* v. *Rhodes*, [1899] 1 Q. B. 77, C. C. R.). A witness who gives false evidence before a grand jury is indictable for perjury. Evidence to prove such perjury must be given by persons present at the time, *e.g.*, other witnesses (*R.* v. *Hughes* (1844), 1 Car. & Kir. 519), but not by any of the grand jurors, as they cannot give evidence of what passes in the grand jury room (*R.* v. *Hughes*, *supra*; *R.* v. *Marsh* (1837), 6 Ad. & El. 236, 237); but see 1 Chitty, Criminal Law, 317.

(*i*) *R.* v. *Preston* (*Lord*) (1691), 1 Salk. 278.

(*k*) 2 Hale, P. C. 157. The signature of the foreman is not essential (*R.* v. *Sidoli* (1833), 1 Lew. C. C. 55.

(*l*) *R.* v. *Thompson* (1846), 1 Cox, C. C. 268.

(*m*) A bill which has been thrown out may be again preferred to the same grand jury during the same assizes or sessions (*R.* v. *Simmonite* (1843), 1 Cox, C. C. 30; *R.* v. *Newton* (1843), 2 Mood. & R. 503); but see *R.* v. *Humphreys* (1842), Car. & M. 601; *R.* v. *Austin* (1850), 4 Cox, C. C. 385. In practice a bill is only preferred again to the same grand jury by the direction of the judge. A fresh bill may be preferred at the next assizes or sessions, unless a time limit prevents (see *R.* v. *Killminster* (1835), 7 C. & P. 228). If a bill is ignored, the defendant may, if he is in custody, be detained until the grand jury are discharged, and then, if no fresh bill has been found against him, he is entitled to be discharged (*R.* v. *Simmonite*, *supra*).

(*n*) But the grand jury, though formally discharged, may, if they have neither left the precincts of the court nor separated, be recalled and charged with other bills (*R.* v. *Holloway* (1839), 9 C. & P. 43).

SECT. 3. Finding of an Indictment by a Grand Jury.

Several indictments against one person.

Different kinds of finding.

Void finding.

673. A grand jury may at the same court, subject to the provisions of the Vexatious Indictments Act, 1859, return any number of indictments against the same person (*o*). If an indictment contains more than one count, they may find a true bill on one or more counts and no true bill on others (*p*). If two persons are jointly indicted, the grand jury may find a true bill as to one and no true bill as to the other (*q*). If a person is indicted for murder, they may find a true bill for manslaughter. They cannot return a true bill as to part of a count or of an indictment which contains only one count and no true bill as to the other part (*r*). A conditional or inconsistent finding is void (*s*). They cannot ignore a bill on the ground of the insanity of the defendant (*a*).

Grand jury at quarter sessions finding bill which must be tried at assizes.

Immunity of grand jury.

674. The grand jury at quarter sessions may find bills which the quarter sessions cannot try (*b*). Such bills, when found, should be transmitted by order of quarter sessions to the assizes for trial, or may be removed by the judge of assize by *certiorari* (*c*).

The members of a grand jury are not liable to be sued or prosecuted for anything done by them with reference to the discharge of their duties (*d*).

Caption.

675. At each sessions or assizes there is one caption which is prefixed to each indictment (*e*). The caption is no part of the indictment itself, but is only a copy of the style of the court at which the indictment is found (*f*). It is a formal statement of the proceedings, describing the court before which the indictment was found, the time and place where it was found, and the jurors by whom it was found. A defendant in a case of high treason is entitled to a copy of it in the first instance after the finding of the indictment (*g*). It is also annexed to the return to a writ of *certiorari*. On the caption may be grounded an objection that an indictment has not been properly found (*h*).

(*o*) 22 & 23 Vict. c. 17, s. 1; see *ante*. As to two indictments in respect of the same facts, see 1 Chitty, Criminal Law, 316; *R.* v. *Button* (1833), 1 Mood. & R. 297.

(*p*) *R.* v. *Fieldhouse* (1775), 1 Cowp. 325.

(*q*) *R.* v. *Cholmley* (1636), Cro. Car. 464. But if A. and B. are indicted for conspiracy, and there is no other party to the conspiracy alleged, the grand jury cannot find a true bill against A. and no true bill against B.; they must find either a true bill against both or no true bill (see p. 264, *ante*).

(*r*) 2 Hawk. P. C., c. 25, s. 2; *R.* v. *Ford* (1607), Yelv. 99; *R.* v. *Serjant* (1669), 1 Sid. 414; *Anon.* (1584), 1 Leon. 287.

(*s*) *R.* v. *Cromwell* (*Lord*) (1602), Yelv. 15; *R.* v. *Powle* (1618), 2 Roll. Rep. 52.

(*a*) *R.* v. *Hodges* (1838), 8 C. & P. 195.

(*b*) See Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 2; *R.* v. *Allum* (1846), 2 Cox, C. C. 62; *R.* v. *Atkinson* (1784), 1 Wms. Saund., 5th ed., 249, n. As to the offences which quarter sessions cannot try, see p. 268, *ante*.

(*c*) *R.* v. *Wetherell* (1819), Russ. & Ry. 381; *R.* v. *Wildman* (1872), 12 Cox, C. C. 354; Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 2; Assizes Relief Act, 1889 (52 & 53 Vict. c. 12), s. 5.

(*d*) *Floyd* v. *Barker* (1607), 12 Co. Rep. 23; *Macclesfield* (*Earl*) v. *Starkey* (1684), 10 State Tr. 1329, 1413.

(*e*) *R.* v. *Marsh* (1837), 6 Ad. & El. 236, *per* COLERIDGE, J., at p. 248.

(*f*) 1 Chitty, Criminal Law, 326.

(*g*) See *R.* v. *Jackson* (1795), 25 State Tr. 783, at p. 883; see p. 456, *post*.

(*h*) 1 Chitty, Criminal Law, 326; *R.* v. *Marsh*, *supra*. The caption was

SECT. 4.—*Certiorari.*

SECT. 4. Certiorari.

Removal of indictment by *certiorari*.

676. An indictment or presentment found by any court may be removed into the King's Bench Division of the High Court of Justice by a writ of *certiorari* issuing out of that court. The object of the removal is to obtain a trial at bar or before the justices of assize or at the sittings of the High Court of Justice in London or Middlesex or to quash the indictment or presentment (*i*).

When granted.

The writ of *certiorari* is demandable as of right by the Attorney-General acting on behalf of the Crown (*k*), and it seems that it is demandable as of right in the case of an indictment against a body corporate which is not authorised to appear by solicitor in the court in which the indictment is preferred (*l*). In other cases an indictment will not be removed into the King's Bench Division for trial, either at the instance of the prosecutor or of the defendant, unless the party applying for the removal shows to the satisfaction of the court that a fair and impartial trial of the case cannot be had in the court below, or that some question of law of more than usual difficulty and importance is likely to arise upon the trial, or that a special jury or a view of the premises in respect whereof any indictment is preferred may be required for a satisfactory trial of the case in a county other than that in which the indictment is preferred (*m*).

An indictment may also be removed by *certiorari* into the Central Criminal Court (*n*).

Effect of writ.

677. On an order for the issue of the writ of *certiorari* being made, and on the necessary recognisance being entered into and lodged with the clerk of the peace or clerk of assize who has custody of the indictment, all proceedings upon the indictment in the court below are stayed (*o*).

Return.

A return is then made to the writ by indorsing on the writ a memorandum signed and sealed by one of the persons to whom the writ is addressed and by returning the writ to the Crown Office with the indictment and other documents ordered to be returned (*p*).

Trial.

If an indictment has been removed by *certiorari* before trial into the King's Bench Division and remains there, it is usually tried at the assizes or in the King's Bench Division in the same way as a civil action; but an order may be made by the King's Bench

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formerly annexed to the indictment in proceedings in error, but these proceedings are now abolished; see p. 433, *post*.

(*i*) Short and Mellor, Practice of the Crown Office, 2nd ed., 15; Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 34; and title CROWN PRACTICE. As to the removal of indictments found at quarter sessions, see Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 2, and Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), s. 16.

(*k*) *R.* v. *Eaton* (1787), 2 Term Rep. 89; *R.* v. *Thomas* (1815), 4 M. & S. 442; *R.* v. *Lewis* (1769), 4 Burr. 2456, at p. 2458.; see *Cumberland* (*Inhabitants*) v. *R.* (1803), 3 Bos. & P. 354, H. L.

(*l*) See p. 266, *ante*.

(*m*) See title CROWN PRACTICE.

(*n*) See title CROWN PRACTICE.

(*o*) See *R.* v. *Battams* (1801), 1 East, 298.

(*p*) See title CROWN PRACTICE.

SECT. 4. Certiorari.

Division, or in vacation by a judge in chambers, that the trial shall take place at the Central Criminal Court (*q*).

Change of venue.

678. The removal of an indictment by *certiorari* into the King's Bench Division does not change the venue, and unless an order is made changing the venue, or unless the Attorney-General, prosecuting on behalf of the Crown, demands a trial at bar, the indictment will be tried at the civil side of the assizes for the county where the indictment was found (*r*). If an indictment is removed from the Central Criminal Court to the King's Bench Division, the writ of *certiorari* must specify the county or jurisdiction in which the indictment is to be tried, and a jury must be summoned and the trial must proceed in the same manner as if the indictment had originally been found in that county or jurisdiction (*s*).

Application for change of venue.

In other cases where an indictment has been removed by *certiorari*, an application to change the venue must be made to the divisional court of the King's Bench Division during the sittings or in vacation to a judge in chambers (*a*).

Trial at bar.

679. If an indictment has been removed by *certiorari* into the King's Bench Division, the Attorney-General, if prosecuting on behalf of the Crown, has the right to demand a trial at bar, that is, a trial before at least three judges of that division (*b*). A trial for treason committed abroad under 35 Hen. 8, c. 2, s. 1, is tried at bar without any application by the Attorney-General (*c*).

SECT. 5.—*Nolle Prosequi.*

Stay of proceedings by *nolle prosequi*.

680. Proceedings on an indictment may be stayed at any time after the finding of the indictment and before judgment by the entry of a *nolle prosequi* (*d*), which can only be entered by the authority

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(*q*) See title CROWN PRACTICE.

(*r*) Crown Office Rules, 1906, r. 14; see 2 Co. Inst. 424; 6 Hen. 8, c. 6 (1514—5).

(*s*) Crown Office Rules, 1906, r. 18; *R.* v. *Castro* (1874), L. R. 9 Q. B. 350, 355. If an indictment for an offence committed out of the jurisdiction of the Central Criminal Court is removed under the Central Criminal Court Act, 1856 (19 & 20 Vict. c. 16), into that court for trial, the removal operates *ipso facto* as a change of venue to that court.

(*a*) See title CROWN PRACTICE. The court has power to change the venue both in felony and in misdemeanour, but only exercises it in two cases—(1) where it is shown that a fair and impartial trial cannot be had in the county or other jurisdiction where the venue is laid (see *R.* v. *Boughton*, [1895] 2 I. R. 386; *R.* v. *Barrett* (1870), 4 I. R. C. L. 285; *R.* v. *Fay* (1872), 6 I. R. C. L. 436; *R.* v. *Patent Eureka and Sanitary Manure Co., Ltd.* (1865), 13 L. T. 365; *R.* v. *Dunn* (1847), 11 Jur. 287; *R.* v. *Holden* (1833), 5 B. & Ad. 347; *R.* v. *Hunt* (1820), 3 B. & Ald. 444; *R.* v. *Penprase* (1833), 4 B. & Ad. 573; *R.* v. *Fawle* (1726), 2 Ld. Raym. 1452); (2) when it appears necessary that the jury should have a view of premises situate in a different county from that in which the indictment is preferred (*R.* v. *Sheldon* (1875), 32 L. T. 27; *R.* v. *Gyde* (1908), 72 J. P. 504); see Short and Mellor, Practice of the Crown Office, 2nd ed., 106—107.

(*b*) *R.* v. *Hales* (1728), 2 Stra. 816; *R.* v. *Castro* (1874), L. R. 9 Q. B. 350; *Dixon* v. *Farrer* (1886), 17 Q. B. D. 658; see *R.* v. *Jameson*, [1896] 2 Q. B. 425, at p. 431, n.; Crown Office Rules, 1906, rr. 150—155.

(*c*) *E.g.*, *R.* v. *Lynch*, [1903] 1 K. B. 444.

(*d*) As to the form of an entry of a *nolle prosequi*, see Crown Office Rules, 1906, Appendix, No. 120; Short and Mellor, Practice of the Crown Office,

of the Attorney-General (*e*). The effect of this is that all proceedings on the indictment are stayed, and the defendant, if he is in custody, is discharged, but may be indicted afresh on the same charge.

SECT. 5. Nolle Prosequi.

Part V.—Trial of Indictments.

SECT. 1.—*Proceedings before Plea.*

SUB-SECT. 1.—*Appearance.*

Appearance of defendant.

681. If an indictment has been found against a defendant and he is in custody, he is placed at the bar in the dock (*f*). If he has been bound over to appear, he is called upon to surrender, and if he surrenders, he takes his place in the dock, unless he has been allowed by favour of the court in the case of a misdemeanour to appear by attorney (*g*).

Proceedings if defendant does not appear.

If the defendant has been bound over and does not surrender, his recognisances and those of his bail, if bail has been required, may be estreated by the written order of the presiding judge (*h*), and a bench warrant may be issued for his arrest (*i*).

2nd ed., 553. A *nolle prosequi* may be entered as against one of two or more defendants who are jointly indicted to enable one such defendant to give evidence for the Crown against his co-defendants. For form of the Attorney-General's fiat to enter a *nolle prosequi* in such a case, see Archbold, Criminal Pleading, 23rd ed., 139. As to entry of the verdict, see *R.* v. *Hempstead* (1818), Russ. & Ry. 344.

(*e*) *R.* v. *Dunn* (1843), 1 Car. & Kir. 730.

(*f*) He ought to be brought to the bar without irons or other restraint, unless there is a danger of escape or violence (see 2 Hawk. P. C., c. 28, s. 1; 1 Chitty, Criminal Law, 417; and *R.* v. *Brazier* (1899), Archbold, Criminal Pleading, 23rd ed., 181).

(*g*) *R.* v. *Bacon* (1664), 1 Lev. 146. In cases of indictment against a corporation aggregate the corporation pleads by attorney, but, owing to the difficulty of enforcing the appearance of a corporation, an indictment against a corporation is generally removed to the civil side of the assizes or to the King's Bench Division (*R.* v. *Birmingham and Gloucester Rail. Co.* (1842), 3 Q. B. at p. 233; *R.* v. *Manchester Corporation* (1857), 7 E. & B. 458; Corner's Crown Practice, 53; Crown Office Rules, 1906, r. 13). In case of an indictment which is found in the King's Bench Division or has been removed there or to the civil side of the assizes, if the charge is one of treason or felony, the defendant must appear personally in court to plead, unless he has obtained the permission of the court to plead by a solicitor (Crown Office Rules, 1906, r. 121). If the charge is one of misdemeanour, or if the defendant on a charge of treason or felony has obtained leave to plead by a solicitor, the defendant may enter a written plea (Short and Mellor, Practice of the Crown Office, 2nd ed., 100). As to prisoners standing in the dock, see *R.* v. *Horne Tooke* (1794), 25 State Tr. 1, 12; *R.* v. *St. George* (1840), 9 C. & P. 483; *R.* v. *Douglas* (1841), Car. & M. 193; *R.* v. *Zulueta* (1843), 1 Car. & Kir. 215. A defendant in misdemeanour who is conducting his own defence may after arraignment by special permission of the court leave the dock and take a seat at the table of the court. After he has once pleaded, his presence is not indispensably necessary (see *R.* v. *Carlile* (1834), 6 C. & P. 636). For instances of trials proceeding in the absence of a prisoner, see *R.* v. *Berry* (1897), 104 L. T. Jo. 110; *R.* v. *Castro* (1873), Shorthand Notes, III., 2328 (53rd day).

(*h*) Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 31.

(*i*) 1 Chitty, Criminal Law, 339. If the defendant is not in custody and has not been bound over to appear, on a production of a certificate of the finding of the

SECT. 1. Proceedings before Plea.

Illness of defendant.

682. If the defendant is ill and unable to take his place in the dock, the trial, unless the indictment is in the King's Bench Division, cannot proceed (*k*).

Appearance by counsel.

683. Both prosecutor and defendant are entitled to have counsel to appear on their behalf to conduct the prosecution and the defence respectively (*l*).

It is the invariable practice at the assizes and the Central Criminal Court, and at most courts of quarter sessions, for the prosecution to be conducted by counsel (*m*).

A defendant, if he wishes and if he has the means, may be assisted by solicitor and counsel, or may instruct counsel "from the dock" directly (*n*).

Poor Prisoners Defence Act.

684. If a defendant's means are insufficient to enable him to obtain legal aid, and if it appears from the nature of the defence set up by him as disclosed in the evidence given or statement made before the committing justices that it is desirable in the interests of justice that he should have legal aid, the committing justices upon the committal of the defendant for trial and the judge of a court of assize or a chairman of a court of quarter sessions or a recorder at any time after reading the depositions, may certify that the prisoner ought to have legal aid, and thereupon the defendant is entitled to have a solicitor and counsel assigned to him; if a solicitor is assigned, he instructs counsel and procures any evidence required on the prisoner's behalf (*o*).

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indictment for the offence, the defendant may be arrested on a warrant issued by any justice or justices of the county or place in which the offence is alleged to have been committed or in which the person indicted resides or is, or is supposed or suspected to be. On the person being brought before the justice or justices of the place where the warrant was issued the justices, on proof that he is the person named in the indictment, may without further inquiry or examination commit him for trial or admit him to bail (Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 3). In indictments for the non-repair or obstruction of highways, bridges etc. the defendants are generally allowed to appear by attorney. In such a case they do not take their places in the dock to plead orally, but plead in writing (see Archbold, Criminal Pleading, 23rd ed., 179).

(*k*) See *R.* v. *Dwerryhouse* (1847), 2 Cox, C. C. 446. If a prisoner has been committed for trial and it appears to any two members of the visiting committee of the prison in which the prisoner is awaiting his trial that he is insane, they are to call to their assistance two legally qualified medical practitioners, and such members of the committee and practitioners are to examine the prisoner and inquire into his sanity, and after such examination and inquiry may certify in writing that he is insane; on a prisoner being so certified to be insane a Secretary of State may remove such prisoner to a lunatic asylum and order him to be detained there, until he is remitted to prison or discharged (Criminal Lunatics Act, 1884 (47 & 48 Vict. c. 64), s. 2 (1), (3); and see s. 16, definition of "prisoner").

(*l*) Formerly counsel were not allowed to appear for defendants on a charge of felony except to argue points of law for them, but the law was altered as to treason by the Treason Act, 1695 (7 & 8 Will. 3, c. 3), s. 1, and as to felony by the Trials for Felony Act, 1836 (6 & 7 Will. 4, c. 114), s. 1. A point of law in favour of a defendant may be suggested to the court or argued by counsel who is not instructed in the case, or by anyone else acting as *amicus curiæ* (see *Lilburne's Trial* (1649), 4 State Tr. 1270, 1305; *R.* v. *Ratcliffe* (1746), 18 State Tr. 430, 435; 1 Chitty, Criminal Law, 408; *Faulkner* v. *R.*, [1905] 2 K. B. 76.

(*m*) See p. 363, *post;* and title BARRISTERS, Vol. II., p. 373.

(*n*) See title BARRISTERS, Vol. II., p. 389.

(*o*) Poor Prisoners Defence Act, 1903 (3 Edw. 7, c. 38), s. 1. See rules made

SUB-SECT. 2.—*Arraignment.*

Arraignment.

685. If the defendant appears in the dock, he is called upon by name and told to hold up his hand (*p*), and he is then arraigned by the officer of the court. The arraignment consists of reading over the indictment, or the material parts or an abstract of it, and asking the accused whether he is guilty or not guilty (*q*).

Defendant standing mute.

686. If the defendant on being arraigned stands mute and does not answer, the court directs a jury to be impanelled from the panel or any persons present and sworn to try the issue whether he is mute of malice or by the visitation of God (*r*).

If the defendant has counsel, his counsel may address the jury and call witnesses to prove that he is mute by the visitation of God (*s*).

If the jury find that the defendant is mute of malice, the court may order the proper officer to enter a plea of not guilty on the defendant's behalf, and the plea so entered will have the same effect as if he had actually pleaded it (*a*).

If the jury find that the defendant is mute by the visitation of God, the jury may be resworn to try if he is fit to plead; if the defendant can communicate by signs, and there is anyone who can interpret the signs to the court, or if the defendant can read and write, the jury should be directed to find that he is able to plead, and the defendant can then be arraigned and can answer by signs or by means of writing (*b*).

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under the Act, 13th May, 1904, Statutory Rules and Orders, 1904, p. 123. A defendant may also obtain permission to defend *in formâ pauperis* and, if he obtains such permission, may have counsel assigned to him (1 Chitty, Criminal Law, 412), but this course is rarely adopted.

(*p*) The holding up the hand is a mere ceremony to show the court who the prisoner is (see *Lilburne's Trial* (1649), 4 State Tr. 1270, at p. 1289; *Stafford's (Lord) Trial* (1680), 7 State Tr. 1294, 1555).

(*q*) If an indictment contains a count which alleges merely a previous conviction, the defendant is not to be arraigned on that count until after he has pleaded guilty or has been convicted; if he is arraigned on such a count without having pleaded guilty or having been convicted and is afterwards tried without a fresh arraignment and is convicted, the conviction is bad (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 116; *Faulkner* v. *R.*, [1905] 2 K. B. 76).

(*r*) *R.* v. *Jones* (1773), 1 Leach, 102; 1 Chitty, Criminal Law, 424.

(*s*) *R.* v. *Roberts* (1816), Carrington, Supplement to Criminal Law, 57.

(*a*) Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 2. In a case where the jury found a verdict that the defendant stood mute of malice ERLE, J., refused to assign counsel to the defendant, as he had no authority to do so, and as the defendant's assent could not in the circumstances be given (*R.* v. *Yscuado* (1854), 6 Cox, C. C. 386). A plea of not guilty may be entered under the Criminal Law Act, 1827, if a defendant refuses to plead on the ground that the court has no jurisdiction (*R.* v. *Bernard* (1858), 1 F. & F. 240), or on the ground that he has already pleaded to an indictment for the same offence and has been tried before a court that had no jurisdiction to try the offence (*R.* v. *Bitton* (1833), 6 C. & P. 92).

(*b*) *R.* v. *Jones* (1773), 1 Leach, 102; *R.* v. *Thompson* (1827), 2 Lew. C. C. 137.

SECT. 1.
Proceedings before Plea.

Trial of issue if defendant is sane or not.

687. If the jury find that the defendant is not able to plead, the jury are again resworn to try whether he is sane or not, and they should be directed that, if they are satisfied that the defendant from the defect of his faculties has not intelligence enough to understand the nature of the proceedings against him, they ought to find him not sane. If the jury find that the defendant is not sane, then the judge may order him to be detained during the King's pleasure (*c*).

If they find that he is sane, and the charge is one of misdemeanour, his counsel may plead not guilty for him and the trial can proceed; but if the charge is one of felony, the proper course would seem to be to adjourn the trial, so that the prisoner may be instructed how to plead by signs (*d*).

Procedure if defendant appears insane.

688. If a person indicted for an offence appears insane, the court may on his arraignment order a jury to be impanelled to try whether he is sane, and, if the jury find that he is then insane, the court may order the finding to be recorded and the person to be kept in custody during the King's pleasure (*e*).

SUB-SECT. 3.—*Motion to quash Indictment—Demurrer.*

Motion to quash indictment.

689. A motion to quash an indictment for a formal defect must be made before the jury are sworn, and should properly be made before plea pleaded (*f*).

A motion to quash an indictment because of a substantial defect which cannot be amended (*g*) may be made at any time before verdict, but the proper time to make the motion is before plea pleaded (*h*).

(*c*) Criminal Lunatics Act, 1800 (39 & 40 Geo. 3, c. 94), s. 2; *R.* v. *Pritchard* (1836), 7 C. & P. 303; *R.* v. *Berry* (1876), 1 Q. B. D. 447, C. C. R.).

(*d*) *R.* v. *Dyson* (1831), 1 Lew. C. C. 64, at p. 65. In *Steel's Case* (1787), 1 Leach, 451, the jury found that the defendant was mute by visitation of God and, a plea of not guilty was entered for her and she was tried; no further question was asked the jury as to her ability to plead on her sanity. The proper procedure does not seem to have been followed in this case, and it cannot be regarded as an authority (see *R.* v. *Pritchard* and *R.* v. *Berry*, *supra*). In *R.* v. *Stafford Prison* (*Governor*), [1909] 2 K. B. 81, a prisoner who was found by the jury to be mute by the visitation of God was also found to be incapable of pleading and taking his trial upon the indictment and of understanding and following the proceedings by reason of his inability to communicate with and be communicated with by others; it was held that this amounted to a finding that he was insane within the meaning of the Criminal Lunatics Act, 1800 (39 & 40 Geo. 3, c. 94), s. 2.

(*e*) Criminal Lunatics Act, 1800 (39 & 40 Geo. 3, c. 94), s. 2; see *R.* v. *Keary* (1878), 14 Cox, C. C. 143. Where a jury is so impanelled, the onus is on the prosecution to prove the sanity of the defendant (*R.* v. *Davies* (1853), 3 Car. & Kir. 328). The jury may form their own judgment of the defendant's sanity or insanity by his demeanour without any evidence being given; if he shows strong symptoms of insanity, it is unnecessary to ask him if he wishes to cross-examine any witnesses who are called or to make any remarks or offer evidence (*R.* v. *Goode* (1837), 7 Ad. & El. 536).

(*f*) *R.* v. *Rookwood* (1696), 13 State Tr. 139, 161, 165; Fost. 231; Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 25. Such a motion may be met by an amendment (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 25; Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 19).

(*g*) See p. 344, *ante*.

(*h*) *R.* v. *Heane* (1864), 4 B. & S. 947; *R.* v. *Goldsmith* (1873), L. R. 2 C. C. R. 74; *R.* v. *James* (1871), 12 Cox, C. C. 127; see *R.* v. *Jameson*, [1896]

SECT. 1. Proceedings before Plea.

After verdict an objection to the indictment may be taken by motion in arrest of judgment, if the defect is one that is not cured by verdict (*i*).

Demurrer.

690. A defendant may also object to an indictment by demurrer, *i.e.*, allege in writing that the indictment is not sufficient in law, but proceeding by demurrer is now unusual (*j*).

SECT. 2.—*Pleas.*

SUB-SECT. 1.—*Special Pleas.*

What a defendant may plead.

691. A defendant may plead the following special pleas: a plea to the jurisdiction, a plea of pardon, a plea of *autrefois convict* or *autrefois acquit*.

A defendant may also plead the general plea of guilty or not guilty; to an indictment for libel a defendant besides pleading not guilty may plead a special plea that the matter charged as libellous is true, and that its publication was for the public benefit (*k*); to an indictment against a parish for non-repair of a highway the inhabitants besides pleading not guilty may plead the special plea that some other person or persons are bound to repair *ratione tenuræ* (*l*). Special pleas must be in writing.

Plea to the jurisdiction.

A plea to the jurisdiction raises an objection to the jurisdiction of the court (*m*). It is more usual, however, for the defendant to take advantage of the want of jurisdiction of the court under the general issue (*n*).

Pardon.

A pardon other than a pardon under statute must be specially pleaded, and a person who has received a pardon and pleads the general issue will be taken to have waived his plea (*o*).

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2 Q. B. 425. When the indictment is for some great crime, such as treason or felony, the court will only quash the indictment "upon the plainest ground," and will leave the defendant to his remedy by demurrer or motion in arrest of judgment (*R.* v. *Lynch*, [1903] 1 K. B. 446, at p. 449; *R.* v. *Sheares* (1798), 27 State Tr. 255, at p. 266). So also if the indictment is for a crime of a public nature, as a nuisance to a highway, perjury, sedition (2 Hawk. P. C., c. 25, s. 148), a cheat, or an offence founded on fraud or oppression (see 2 East, P. C. 818 n.; *R.* v. *Wadsworth* (1694), 5 Mod. Rep. 13; *R.* v. *Orbell* (1703), 6 Mod. Rep. 42; see, too, *R.* v. *Bailey* (1743), 2 Stra. 1211; *R.* v. *King* (1747), 2 Stra. 1268).

(*i*) See Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 21; *Heymann* v. *R.* (1873), L. R. 8 Q. B. 102.

(*j*) See Starkie, Criminal Pleading, Vol. I., 315. For the form of a demurrer, see 4 Chitty, Criminal Law, 517.

(*k*) Libel Act, 1843 (6 & 7 Vict. c. 96), s. 6; see Crown Office Rules, 1906, Appendix, No. 81, and title LIBEL AND SLANDER.

(*l*) See Crown Office Rules, 1906, Appendix, No. 79.

(*m*) See 4 Chitty, Criminal Law, 505, for the form of a plea to the jurisdiction. The plea should be in writing (2 Hawk. P. C., c. 37, s. 59).

(*n*) See *R.* v. *Heane* (1864), 4 B. & S. 947; *R.* v. *Goldsmith* (1873), L. R. 2 C. C. R. 74; but see *Kinloch's Case* (1746), Fost. 16; *R.* v. *Jameson* (1896), 65 L. J. (M. C.) 218, 225.

(*o*) 2 Hawk. P. C., c. 37, ss. 58, 59. If a pardon is granted after plea pleaded, advantage of it may be taken at any time, after verdict in arrest of judgment, and after judgment in arrest of execution. For form of plea, see 3 Co. Inst. 234; Tremaine, P. C., 311; 2 Hale, P. C. 391; as to pardon, see title CONSTITUTIONAL LAW, Vol. VI., p. 404.

SECT. 2. **Pleas.**

Autrefois convict or *acquit.*

692. The plea of *autrefois convict* or *autrefois acquit* avers that the defendant has been previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned (*p*).

If the defendant pleads *autrefois convict* or *autrefois acquit*, the prosecution replies or demurs. If the prosecution replies, which is the usual course, a jury is sworn to try the issue (*q*).

The onus of proving the plea is on the defendant; he may prove it by producing a certified copy of the record or proceedings of the alleged previous conviction or acquittal (*r*), and showing by such copy or by other evidence, if necessary, that he has been convicted or acquitted of the offence on which he has been arraigned or that he might on his former trial have been convicted of the offence on which he has been arraigned (*s*), or that his previous conviction or acquittal is by statute a bar to subsequent proceedings for the same cause (*t*).

The question for the jury on the issue is whether the defendant has previously been in jeopardy in respect of the charge on which he is arraigned; for the rule of law is that a person must not be put in peril twice for the same offence.

The defendant can only succeed on such a plea if the charge to which he pleads is one in respect of which he could have been legally convicted on the prior occasion or is one in respect of which, by statute, previous proceedings for the same cause are a bar to subsequent proceedings (*a*).

(*p*) The pleas of *autrefois convict* or *autrefois acquit* may be pleaded orally, but must be afterwards reduced to writing. For an instance of a plea of *autrefois acquit*, see *R.* v. *Sheen* (1827), 2 C. & P. 634, at p. 635, and 4 Chitty, Criminal Law, 528. The court, if necessary, will assign counsel to the defendant to draw the plea in a proper form (*R.* v. *Chamberlain* (1833), 6 C. & P. 93). It is sufficient for the defendant to plead that he has been lawfully convicted or acquitted, as the case may be, of the offence charged in the indictment (Criminal Procedure Act, 1857 (14 & 15 Vict. c. 100), s. 28).

(*q*) In *R.* v. *Sheen* (1827), 2 C. & P. 634, at p. 638, counsel for the prosecution replied *ore tenus*. For form of replication, see *R.* v. *Sheen*, *supra*.

(*r*) Evidence Act, 1851 (14 & 15 Vict. c. 99, s. 13); *R.* v. *Bird* (1851), 2 Den. 94.

(*s*) As to the cases when a defendant who has been indicted for one offence can be convicted of another, see p. 371, *post*.

(*t*) See Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 45.

(*a*) In order to succeed on such a plea the defendant must prove that judgment of conviction or acquittal has been given (1 Starkie, Criminal Pleading, 2nd ed., 319). A judgment of conviction that has been reversed as erroneous in law is no bar to a subsequent indictment (*R.* v. *Drury* (1849), 3 Car. & Kir. 193). If a judgment of conviction has been reversed on the facts under the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4, it seems, although it is not clear, that such a reversal would support a plea of *autrefois acquit*. A discharge of a jury without a verdict being given is no bar to a subsequent indictment (*R.* v. *Charlesworth* (1861), 1 B. & S. 460). A summary conviction before justices for an assault is a bar to a subsequent indictment in respect of the same transaction for wounding etc. with intent to maim or to do grievous bodily harm (*R.* v. *Walker* (1843), 2 Mood. & R. 446; Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 45). But if the person assaulted dies after the conviction, the summary conviction is no bar to an indictment for murder or manslaughter (*R.* v. *Morris* (1867), L. R. 1 C. C. R. 90; *R.* v. *Friel* (1890), 17 Cox, C. C. 325). An acquittal on an indictment for murder is a bar to an indictment for

If the jury find in favour of the defendant on the issue raised by a plea of *autrefois convict* or *autrefois acquit*, he must be discharged unless there is another indictment against him.

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manslaughter in respect of the same transaction; so also an acquittal for manslaughter is a bar to an indictment for murder in respect of the same transaction (*Holtcroft's Case*, cited 4 Co. Rep. 46 b; 2 Hale, P. C. 246; Russell on Crimes, 6th ed., Vol. I., 42; *R.* v. *Tancock* (1876), 13 Cox, C. C. 217). An acquittal on an indictment for murder (and, it seems, also for manslaughter) is a bar to a subsequent indictment for an assault, if there is only one act alleged in the first indictment, but if there are several distinct and independent assaults, and some or any of them did not in any way conduce to the death of the person killed, then an acquittal on an indictment for murder, although all these assaults were included in the indictment, is no bar to an indictment for the distinct and independent assaults which did not conduce to the death (*R.* v. *Bird* (1851), 2 Den. 94). An acquittal on a charge of felony under the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 32, for throwing wood upon a railway with intent to endanger the safety of persons travelling or being on the railway is not a bar to an indictment on the same facts under s. 34 of the same Act for the misdemeanour of unlawfully endangering the safety of any such person by an unlawful act, or to an indictment under the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 36, for the misdemeanour of unlawfully obstructing an engine etc. on a railway by an unlawful act (*R.* v. *Gilmore* (1882), 15 Cox, C. C. 85). An acquittal on an indictment for rape is not a bar to an indictment for a common assault, although the transaction is the same (*R.* v. *Dungey* (1864), 4 F. & F. 99). An acquittal on an indictment for rape would be a bar to an indictment for attempt to ravish or for an indecent assault (Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 9). An acquittal on an indictment for an indecent assault is a bar to an indictment for a common assault (*R.* v. *Bostock* (1893), 17 Cox, C. C. 700). An acquittal on an indictment for false pretences is a bar to an indictment for larceny on the same facts (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 88); but an acquittal on an indictment for larceny is not a bar to an indictment for false pretences (see *R.* v. *Henderson* (1841), Car. & M. 328, where the point was raised, but it became unnecessary to decide it). An acquittal on an indictment for breaking and entering a dwelling-house and stealing there is not a bar to an indictment on the same facts for breaking and entering a dwelling-house with intent to steal (*R.* v. *Vandercomb* (1796), 2 Leach, 708). An acquittal on an indictment charging the defendant with stealing goods alleged to be the property of one person is not a bar to an indictment charging him with stealing the same goods alleged to be the property of another person, although the erroneous allegations in the first indictment might have been amended (*R.* v. *Green* (1856), Dears. & B. 113). An acquittal on an indictment charging larceny at common law and the felonious receiving of goods, when the ground of the acquittal was that the goods were fixtures, is no bar to a subsequent indictment under the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 31, for stealing fixtures (*R.* v. *O'Brien* (1882), 15 Cox, C. C. 29, C. C. R.). An acquittal on an indictment against a bankrupt for omitting to disclose part of his property (Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 11) is not a bar to a subsequent indictment for omitting to disclose the same property and also other property, although such a subsequent indictment ought not, except in very peculiar circumstances, to be preferred, and the judge in such a case would, in the absence of peculiar circumstances, advise the jury to acquit (*R.* v. *Champneys* (1837), 2 Mood. & R. 26). An acquittal before a court that had no jurisdiction to try the offence charged is not a bar to a subsequent indictment before a court that has jurisdiction (2 Hawk. P. C., c. 35, ss. 3, 4; see *R.* v. *Bitton* (1833), 6 C. & P. 92). An acquittal before a court of competent jurisdiction in a foreign country is a bar to a subsequent indictment here (*R.* v. *Roche* (1775), 1 Leach, 134; *R.* v. *Hutchinson* (1677), 3 Keb. 785; see *Beak* v. *Thyrwhit* (1688), 3 Mod. Rep. 194; Russell on Crimes, 6th ed., Vol. I., 52, n.); as to a copy of the record in such a case, see Evidence Act, 1851 (14 & 15 Vict. c. 99), s. 7. The dismissal of a charge "without prejudice" is a bar to subsequent proceedings for the same offence (*Great Southern and Western Rail. Co.* v. *Gooding*, [1908] 2 I. R. 429).

SECT. 2. Pleas.

Pleading over.

If the jury find against the defendant and the charge is one of felony, he is allowed to "plead over," that is, to plead not guilty. In misdemeanours he cannot, strictly speaking, plead over; but the court may allow him to withdraw his special plea and plead not guilty (*b*).

SUB-SECT. 2.—*The General Issue.*

Pleading generally.

693. If no special plea has been pleaded, or if a special plea has been pleaded and the issue on it has been decided against the defendant and he has been allowed to plead over, the defendant is called upon to plead generally to the indictment. He can plead either guilty or not guilty.

Plea of not guilty.

By a plea of not guilty the defendant, if he has no privilege of peerage, thereby "puts himself upon the country" for trial, and the court must thereupon order a jury to be called in the usual manner for the trial of the defendant (*c*).

Application for postponement of trial.

694. After plea pleaded, and before the jury are called, an application may be made for the postponement of the trial (*d*). Such a postponement may be ordered on an application made at the instance of either the prosecution or the defendant (*e*).

(*b*) See *R.* v. *Gilmore* (1882), 15 Cox, C. C. 86, 88.

(*c*) Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 1.

(*d*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 27.

(*e*) The application should be supported by an affidavit (*R.* v. *Savage* (1843), 1 Car. & Kir. 75; *R.* v. *Macarthy* (1842), Car. & M. 625; *R.* v. *Palmer* (1834), 6 C. & P. 652). The grounds on which postponement has been granted are—the absence or illness of a material witness as to the facts (*R.* v. *Hunter* (1829), 3 C. & P. 591; *R.* v. *Bowen* (1840), 9 C. & P. 509; *R.* v. *Savage* (1843), 1 Car. & Kir. 75; *R.* v. *Macarthy* (1842), Car. & M. 625; *R.* v. *Palmer* (1834), 6 C. & P. 652; *R.* v. *Beardmore* (1837), 7 C. & P. 497; *R.* v. *Parish* (1837), 7 C. & P. 782; *R.* v. *Lawrence* (1866), 4 F. & F. 901); or the existence of great excitement on the subject of the trial in the neighbourhood of the place of trial (*R.* v. *Bolam* (1839), 2 Mood. & R. 192; *R.* v. *Jolliffe* (1791), 4 Term Rep. 285); the absence of a witness as to character merely is no ground for postponing the trial (see *R.* v. *Jones* (1806), 8 East, 31, at p. 34). Postponement will not be granted to enable the defence to make inquiries as to the evidence of fresh witnesses for the prosecution who were not called before the committing justices (*R.* v. *Johnson* (1847), 2 Car. & Kir. 354). Formerly, where a material witness was a child who was incapable of understanding the nature of an oath, a trial was sometimes postponed to give opportunities for the instruction of the witness (see *R.* v. *White* (1786), 1 Leach, 430; *R.* v. *Wade* (1825), 1 Mood. C. C. 86; *R.* v. *Williams* (1835), 7 C. & P. 320; *R.* v. *Milton* (1841), Ir. Circ. Cas. 16; *R.* v. *Nicholas* (1846), 2 Car. & Kir. 246); but the provisions of the Children Act, 1908 (8 Edw. 7, c. 67), s. 30, have probably now made such postponement in many cases unnecessary. The prisoner may at the discretion of the court, if the trial is postponed, be detained in custody or be admitted to bail or discharged on his own recognisances (*R.* v. *Beardmore* (1836), 7 C. & P. 497; *R.* v. *Parish* (1837), 7 C. & P. 782; *R.* v. *Osborn* (1837), 7 C. & P. 799; *R.* v. *Crowe* (1829), 4 C. & P. 251). If a defendant is indicted at the assizes next following his commitment, and the trial is postponed because of the illness of a material witness, the trial may be again postponed at the next assizes on a similar ground, in spite of the provisions of the Habeas Corpus Act, 1679 (31 Car. 2, c. 2), s. 6 (*R.* v. *Bowen* (1840), 9 C. & P. 509). It is not usual to order the defendant to pay the costs of the prosecution on a postponement, if the application is by the defendant, or to order the prosecution to pay the defendant's costs, if the application is by the prosecution (*R.* v. *Hunter* (1829), 3 C. & P. 591; *R.* v. *Crowe* (1829), 4 C. & P. 251).

SECT. 3.—*The Petty Jury.*

SUB-SECT. 1.—*Calling the Jury.*

Petty jury.

695. After the defendant has pleaded not guilty, if the parties are ready to proceed with the trial, the next step in the proceedings is to call a petty jury (*f*).

How summoned.

The sheriff receives a precept from the clerk of the peace in the case of quarter sessions, or from the justices of assize in the case of assizes, to summon to the court a sufficient number of duly qualified jurors (*g*).

The panel.

It is his duty to summon the jurors and to return their names, with their addresses and occupations, on the panel or piece of parchment which he delivers to the clerk of the court (*h*).

Calling the panel over.

The usual course is for the clerk of the court first to call over all the names of the jurors in the panel, when those who do not answer to their names are liable to be fined by the court.

Choosing the jury.

The clerk of the court then calls the names of twelve jurors who have answered to their names, and summons them to take their places in the jury box (*i*).

Swearing the jury.

A jury is not properly constituted until all the twelve persons serving on it are sworn or have taken an affirmation to try the issue raised by the defendant's plea of not guilty.

SUB-SECT. 2.—*Challenges.*

Challenges.

696. On the trial of an indictment for felony, before the jurors are sworn, the defendant and the Crown must be allowed the opportunity of challenging (*i.e.*, objecting to) the jurors who are called to serve.

697. Challenges to jurors are of two kinds, challenges to the array (*i.e.*, to the whole number of jurors in the panel) and challenges to the polls (*i.e.*, to individual jurors).

A challenge to the array must be before any juror is sworn; a

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(*f*) A petty jury is one that tries the issues of fact in criminal cases, as opposed to a grand jury, which finds the indictments.

(*g*) See Juries Act, 1825 (6 Geo. 4, c. 50), s. 20, and title JURIES. A special jury cannot be had in a case of felony. In a case of misdemeanour a special jury may be obtained, when the record is in the King's Bench Division (see *ibid.*, s. 30; Juries Act, 1870 (33 & 34 Vict. c. 77), s. 17). Persons qualified to serve as special jurors are liable to serve on petty juries in criminal cases.

(*h*) A printed panel of the jurors summoned to the assizes is to be made seven days before the commission day, and to be kept in the office for inspection; a printed copy of the panel is to be delivered to any party requiring the same on the payment of 1*s.* (Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 106). Persons accused of treason are entitled to have a copy of the panel delivered to them two days at the least before their trial; see Treason Act, 1695 (7 & 8 Will. 3, c. 3), s. 7). As to amendment of the panel by the judge, see *R.* v. *Phillips* (1868), 11 Cox, C. C. 142.

(*i*) It is not necessary that the names should be called in the order in which they stand in the panel (*Mansell* v. *R.* (1857), Dears. & B. 375). If the clerk of the court calls into the jury box A. B., whose name is in the panel, and Y. Z., whose name is also in the panel, goes into the jury box and is sworn in the name of A. B. and sits with the other jurors at the trial of a prisoner, and the prisoner is convicted, the mistake is not a ground for quashing the conviction (*R.* v. *Mellor* (1858), Dears. & B. 468).

SECT. 3. The Petty Jury.

challenge to the polls before the individual juror who is challenged is sworn (*k*).

Challenge to the array.

698. A challenge to the array is allowed "for favour," *i.e.*, on the ground of any partiality in the sheriff, under-sheriff, or other officer concerned in the summoning and return of the jury, as, for instance, if such officer is the prosecutor or is related to either party, or if any dispute is pending between such officer and either party, or if such officer has been concerned as counsel or solicitor or in some such capacity for either party in the same matter (*l*).

A challenge to the array must be in writing and must state particularly the cause of challenge, and the other party may plead or demur to the challenge (*m*).

When the challenge is pleaded to, the court appoints two impartial persons, called "triers," to try the cause of challenge (*n*).

If the triers decide in favour of the challenge, the array is quashed against the sheriff or other officer who has returned it, and the coroner is ordered immediately to return a fresh panel.

If there is a challenge to the array returned by the coroner, and the array is quashed, the court appoints two persons, called "elisors" (*i.e.*, electors), to return a fresh panel; to this array no challenge is allowed (*o*).

Challenges to the polls.

699. Challenges to the polls are either peremptory or for cause. Peremptory challenges, for which no cause need be shown, are

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(*k*) See also title JURIES. Neither challenges to the array nor challenges to the polls can be taken until a full jury has appeared (*R.* v. *Edmonds* (1821), 4 B. & Ald. 471, at p. 473). The challenge to the polls must be before the juror "comes to the book to be sworn" and before he is sworn, *i.e.*, before a juryman takes the book in his hand at the direction of the court, or, it seems, if he affirms or takes the oath in the Scotch form, or in any other form except the usual one, before the clerk of the court begins to read over the form of affirmation etc. (see *R.* v. *Frost* (1839), 9 C. & P. 129, at p. 137; *R.* v. *Brandreth* (1817), 32 State Tr. 755, at 770; *R.* v. *Giorgetti* (1862), 4 F. & F. 546). If a juror is unchallenged and is sworn, an objection cannot afterwards be taken to him on the ground of partiality (*R.* v. *Wardle* (1842), Car. & M. 647). After verdict the objection cannot be taken that one of the jurors sworn was not returned as a juror (Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 21; see *R.* v. *Metcalfe* (1848), 3 Cox, C. C. 220; *R.* v. *Phillips* (1868), 11 Cox, C. C. 142). *Quære* whether the last-mentioned Act meets the case of a person who is not competent to serve on a jury acting as a juryman. In *R.* v. *Tremearne* (1826), 5 B. & C. 254, decided before the passing of the Act, this was held to be a mis-trial. In *R.* v. *Rothwell* (1895), cited in *Ex parte Morris* (1907), 72 J. P. 5, a rule *nisi* for a *certiorari* to quash an indictment because a juror was under age was discharged on the ground that the objection ought to have been taken at the time of the trial.

(*l*) Co. Litt. 156 a; Bac. Abr. Juries, E, 1; *R.* v. *Edmonds* (1821), 4 B. & Ald. 471; *R.* v. *Sheppard* (1773), 1 Leach, 101; *R.* v. *Dolby* (1821), 1 Car. & Kir. 238; *R.* v. *O'Doherty* (1848), 6 State Tr. (N. S.) 831; *R.* v. *Smith O'Brien* (1848), 7 State Tr. (N. S.) 1, at p. 20; *R.* v. *Mitchel* (1848), 6 State Tr. (N. S.) 599; *R.* v. *Duffy* (1848), 7 State Tr. (N. S.) 795; *R.* v. *O'Connell* (1843-4), 5 State Tr. (N. S.) 69; *R.* v. *Burke* (1867), 10 Cox, C. C. 519; *Mulcahy* v. *R.* (1868), L. R. 3 H. L. 306.

(*m*) *R.* v. *Edmonds* (1821), 4 B. & Ald. 471, at p. 474; see *R.* v. *Hughes* (1843), 1 Car. & Kir. 235. For the form of a challenge to the array, see *R.* v. *Smith O'Brien*, *supra*; *R.* v. *O'Connell*, *supra*.

(*n*) See *R.* v. *Dolby*, *supra*.

(*o*) Co. Litt. 158 a.

allowed to the defendant to the number of thirty-five in treason (*p*) and twenty in felony (*q*). A defendant on a charge of misdemeanour has no peremptory challenge.

The Crown has no peremptory challenge in any case, but may challenge as the names are called over, and is not bound to show the cause of challenge until the panel is gone through; a defendant on a charge of misdemeanour or a defendant on a charge of felony whose peremptory challenges have been exhausted may follow the same course (*r*).

Challenge for cause.

700. When a juror has been challenged for cause, the court appoints triers to try the challenge (*a*).

The causes for challenge are that the juror called is an alien or a minor or not qualified to serve as a juror (*b*), or has some personal defect which renders him incapable of discharging the duty of a juryman, or that he is not impartial (*c*), or that he has served on the coroner's jury or on the grand jury in respect of the same matter (*d*).

If the cause for challenge is allowed, the juror is ordered to stand aside and a fresh juror is called (*e*).

Challenges by co-defendants.

701. If several prisoners are indicted together, they may join in their challenges and may be tried together, unless the judge thinks fit that they should be tried separately (*f*). If they sever in their challenges, each prisoner has a separate right of challenging peremptorily and for cause (*g*).

(*p*) Treason Act, 1695 (7 & 8 Will. 3, c. 3), s. 2; but only twenty when the treason charged is compassing the King's death, or any of the similar offences set out in the Treason Act, 1800 (39 & 40 Geo. 3, c. 93), or the Treason Act, 1842 (5 & 6 Vict. c. 51), ss. 1, 2.

(*q*) Juries Act, 1825 (6 Geo. 4, c. 50), s. 29; *Gray* v. *R.* (1844), 11 Cl. & Fin. 427, H. L.; *Levinger* v. *R.* (1870), L. R. 3 P. C. 282.

(*r*) *R.* v. *Horne Tooke* (1794), 25 State Tr. 1, at 25, *per* EYRE, C.B.; *R.* v. *Frost* (1839), 4 State Tr. (N. S.) 86, at 123; *Mansell* v. *R.* (1857), Dears. & B. 375; *R.* v. *Blakeman* (1850), 3 Car. & Kir. 97; *R.* v. *McGowan* (1858), cited in *R.* v. *McCartie* (1859), 11 I. C. L. R. 188, at p. 206.

(*a*) Co. Litt. 158 a.

(*b*) See title JURIES. If a person summoned is a peer, that is a good cause of challenge on the trial of a commoner (2 Hawk. P. C., c. 43, s. 11). The fact that a juror is over the age of sixty is not a good cause of challenge (*Mulcahy* v. *R.* (1868), L. R. 3 H. L. 306).

(*c*) See *R.* v. *Geach* (1840), 9 C. & P. 499; *R.* v. *Edmonds* (1821), 4 B. & Ald. 471; *R.* v. *Cook* (1696), 13 State Tr. 311, 333; *R.* v. *Swain* (1838), 2 Mood. & R. 112; *R.* v. *Martin* (1848), 6 State Tr. (N. S.) 926; *R.* v. *O'Coigly* (1798), 26 State Tr. 1191, at 1227.

(*d*) See *R.* v. *Snow* (1776), 1 Leach, 152, n.; *R.* v. *Sullivan* (1838), 8 Ad. & El. 831; 25 Edw. 3, stat. 5, c. 3.

(*e*) If the panel is exhausted, the court may of its own accord order the sheriff or other officer to return a fresh panel immediately (1 Chitty, Criminal Law, 508).

(*f*) *R.* v. *Ram* (1893), 17 Cox, C. C. 610. There may be cases where the trial of several prisoners together may be prejudicial to the interests of the individual prisoner; such a joint trial might lead to a conviction in such circumstances that there is a miscarriage of justice, which would justify the Court of Criminal Appeal in reversing the conviction (see *R.* v. *Dibble* (1908), 1 Cr. App. Rep. 155).

(*g*) See Fost. 106; 2 Hale, P. C. 268. *Quære* whether the effect of this is not that the prisoners who sever in these challenges must be tried separately. But

SECT. 3. The Petty Jury.

Juror objecting to serve.

702. An unqualified juror, although he is not challenged by either party, may object to serve, and, if the court finds that he is not qualified, he will be ordered to stand aside (*h*).

SUB-SECT. 3.—*Swearing the Jury.*

Administering oaths or affirmation to jury.

703. When a full jury of twelve men who have not been challenged, or in respect of whom there is no cause for challenge, have been called, the next step is to swear them (*i*). The oath or affirmation is administered by any officer of the court deputed for that purpose (*k*).

Giving the prisoner in charge to the jury.

704. The clerk of the court, if the charge is one of felony, then states the effect of the indictment, or that part of it on which the defendant has been arraigned, to the jury, and gives the prisoner in charge to them. In misdemeanours, as the defendant is entitled to a copy of the indictment, it is not necessary to state its effect, and he is not given in charge to the jury (*l*).

At the assizes, but not at quarter sessions, a proclamation is made at this stage inviting anyone who can inform the court of any crimes committed by the prisoner at the bar to come forward (*m*).

SECT. 4.—*The Hearing.*

Admission of the public.

705. As a general rule all persons have a right to be present in court, provided there is sufficient accommodation and there is no disturbance of the proceedings. It is usual, where cases involving indecent details are called on, to direct females and boys to leave the court; but if an adult woman should insist on being present at the hearing of a case, there is probably no power to prevent her being present. It is expressly provided by statute (*n*) that, when a person who in the opinion of the court is under sixteen is called as a witness in any proceedings in relation to an offence against or

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see *R.* v. *Fisher* (1848), 3 Cox, C. C. 68, where PLATT, B., said it was an "ill practice to allow the challenges to be severed" for the purpose of giving each prisoner a separate trial. If two or more persons are jointly indicted, each may apply to be tried separately, and such an application should be granted if the applicant is likely to be prejudiced by a joint trial (*R.* v. *Dibble* (1908), 1 Cr. App. R. 155).

(*h*) *R.* v. *Grey* (1682), 9 State Tr. 127; *R.* v. *Cook* (1696), 13 State Tr. 311, 313, 318. A juror who has been called to serve on a trial for murder, and who states that he has conscientious objections to capital punishment, may be ordered to stand by (*Mansell* v. *R.* (1857), Dears. & B. 375).

(*i*) A juror who objects to be sworn may affirm (Oaths Act, 1888 (51 & 52 Vict. c. 46), s. 1.

(*k*) It is the practice on a charge of felony to swear each juror separately, and on a charge of misdemeanour to swear four at a time. In felony the form of oath is, "You shall well and truly try and true deliverance make between our sovereign lord the King and the prisoner at the bar, whom you shall have in charge and true verdict give according to the evidence, so help you God" (1 Chitty, Criminal Law, 551; see *R.* v. *Dowlin* (1793), 5 Term Rep. 311, 313). In misdemeanours the form is, "You shall well and truly try the issue joined between our sovereign lord the King and the defendant, and true verdict give" etc. (Dickinson, Quarter Sessions, 5th ed., 508).

(*l*) 1 Chitty, Criminal Law, 555.

(*m*) For the form of the proclamation, see 1 Chitty, Criminal Law, 553.

(*n*) Children Act, 1908 (8 Edw. 7, c. 67), s. 114.

any conduct contrary to decency or morality, the court may order the exclusion of all persons not being members or officers of the court or parties, their counsel or solicitors, and the *bonâ fide* representatives of a newspaper or news agency. No child (*i.e.*, anyone under fourteen) other than an infant in arms may be present during the trial of any person charged with such an offence or during any preliminary proceedings relating to such offence, and, if he is present, he must be ordered to be removed, unless he is the person charged with the offence or his presence is required as a witness or otherwise for the purpose of justice, and then he can only remain so long as his presence is so required (*o*).

Except in the cases above referred to, and in cases under the Incest Act, 1908 (*p*), it does not appear that a judge trying a criminal case has any power to exclude the public in general and to hear a case *in camera*.

SUB-SECT. 1.—*Case for the Prosecution.*

Case for the prosecution.

706. Counsel for the prosecution opens the case for the prosecution to the jury by giving the outline of the evidence and the leading features of the case (*q*), and then calls his witnesses.

When a witness is called an objection may be taken as to his competency; he may then be examined as to his competency before he is sworn (*r*).

If there is no such objection, or if it is made and disposed of, each witness for the prosecution in turn takes the oath or affirmation, and is examined in chief, and may be cross-examined by the defendant or his counsel, and, if cross-examined, may be re-examined by the counsel for the prosecution.

The rules as to the examination, cross-examination, and re-examination of witnesses are, with some exceptions, the same in criminal as in civil trials (*s*).

(*o*) Children Act, 1908 (8 Edw. 7, c. 67), s. 115. This section does not apply to messengers, clerks, and other persons required to attend at any court for purposes connected with their employment.

(*p*) 8 Edw. 7, c. 45. See p. 619, *post*.

(*q*) See *R.* v. *Gascoine* (1837), 7 C. & P. 772; *R.* v. *Jackson* (1837), 7 C. & P. 773; *R.* v. *Bowler* (1837), 7 C. & P. 773; *R.* v. *Deering* (1831), 5 C. & P. 165; *R.* v. *Hartel* (1837), 7 C. & P. 773; *R.* v. *Swatkins* (1831), 4 C. & P. 548; *R.* v. *Orrell* (1835), 7 C. & P. 774; *R.* v. *Davis* (1837), 7 C. & P. 785; *R.* v. *Courvoisier* (1840), 9 C. & P. 362; *R.* v. *Morgan* (1852), 6 Cox, C. C. 116; *R.* v. *Creau* (1861), 8 Cox, C. C. 509; *R.* v. *Dowling* (1848), 7 State Tr. (N. S.) 381, at 390; *R.* v. *Duffy* (1848), 7 State Tr. (N. S.) 795, at 917. The prosecution is always conducted by counsel at the assizes and Central Criminal Court, and at most courts of quarter sessions; but there are a few courts of quarter sessions where solicitors have audience. A prosecutor in person is never allowed to address the jury (*R.* v. *Brice* (1819), 2 B. & Ald. 606). In *R.* v. *Gurney* (1869), 11 Cox, C. C. 414, COCKBURN, C.J., refused to allow a prosecutor to conduct in person a charge of conspiracy.

(*r*) This is called examining a witness on the *voir dire;* if a witness who is incompetent to give evidence (see p. 400, *post*) is called, the objection is taken on the *voir dire*, but may also, it seems, be taken afterwards (see *R.* v. *Moore* (1892), 61 L. J. (M. C.) 80). As to securing the attendance of witnesses, see p. 321, *ante*, and title EVIDENCE.

(*s*) See p. 377, *post*, and title EVIDENCE. As to the unsworn evidence of children, see p. 408, *post*.. For instances in criminal cases of the general rules as regards

SECT. 4. The Hearing.

Witnesses ordered out of court.

707. Witnesses may be ordered out of court at the request of either party (*t*).

All witnesses on the back of the indictment should be called.

708. All the witnesses whose names are on the back of the indictment should be called by the prosecution. Even if it is not proposed to examine a witness whose name is on the back of the

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examination in chief as to the inadmissibility of leading questions on material points in dispute, see *R.* v. *Rosewell* (1684), 10 State Tr. 190; *R.* v. *Watson* (1817), 2 Stark. 116, 128; *R.* v. *De Berenger* (1814), Starkie on Evidence, 4th ed., 167, n.; *R.* v. *Blackburn* (1853), 6 Cox, C. C. 333. As to cross-examination and contradiction of such witness by the party who calls him, if he turns out to be hostile, see Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s. 3; *R.* v. *Ball* (1839), 8 C. & P. 745; *R.* v. *Chapman* (1838), 8 C. & P. 558; *R.* v. *Oldroyd* (1805), Russ. & Ry. 88; *R.* v. *Little* (1883), 15 Cox, C. C. 319; *R.* v. *Dibble* (1908), 1 Cr. App. Rep. 155. As to a witness refreshing his memory, see *R.* v. *Mullins* (1848), 3 Cox, C. C. 526; *R.* v. *Williams* (1853), 6 Cox, C. C. 343; *Guinea's Case* (1841), Ir. Circ. Cas. 167; *R.* v. *Langton* (1876), 2 Q. B. D. 296, C. C. R.; *R.* v. *Dexter* (1899), 19 Cox, C. C. 360; *R.* v. *Robinson* (1897), 61 J. P. 520: *R.* v. *Harvey* (1869), 11 Cox, C. C. 546, at p. 547. As to expert witnesses with regard to handwriting, see *R.* v. *Williams* (1838), 8 C. & P. 434; *R.* v. *Silverlock*, [1894] 2 Q. B. 766, C. C. R.; Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s. 8. As to expert witnesses with regard to insanity and other medical questions, see *R.* v. *Wright* (1821), Russ. & Ry. 456; *R.* v. *Searle* (1831), 1 Mood. & R. 75; *McNaghten's Case* (1843), 10 Cl. & Fin. 200, H.L., at pp. 203, 211; *R.* v. *Frances* (1849), 4 Cox, C. C. 57. As to cross-examination, see *R.* v. *Hardy* (1794), 24 State Tr. 199, at 659, 755; *R.* v. *Watson* (1817), 2 Stark. 116, at p. 135; *R.* v. *Bernard* (1858), 1 F. & F. 240, 249; *R.* v. *Ramsden* (1827), 2 C. & P. 603; *R.* v. *Duncombe* (1838), 8 C. & P. 369; *R.* v. *Watson* (1834), 6 C. & P. 653. As to cross-examination with regard to depositions and other previous statements, see Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), ss. 4, 5; *R.* v. *Riley* (1866), 4 F. & F. 964; and see p. 385, *post.* As to cross-examination with regard to previous convictions, see p. 384, *post;* and as to restrictions on the cross-examination of a defendant who gives evidence, see p. 404, *post.* As to re-examination, see *Queen Caroline's Case* (1820), 2 Brod. & Bing. 284, at p. 294; *R.* v. *Beezley* (1830), 4 C. & P. 220; *R.* v. *Chambers* (1848), 3 Cox, C. C. 92. As to the judge recalling and asking a question of a witness for the prosecution after the close of the case for the prosecution, see *R.* v. *Remnant* (1807), Russ. & Ry. 136; and as to the defendant cross-examining a witness so recalled, see *R.* v. *Watson* (1834), 6 C. & P. 653. As to a judge calling a witness not called by either party (as in *Coulson* v. *Disborough*, [1894] 2 Q. B. 316, C. A.), see *R.* v. *Cliburn* (1898), 62 J. P. 232; and as to the cross-examination of such a witness, see *R.* v. *Cliburn*, *supra.*

(*t*) It is in the discretion of the court whether the order should be made (*R.* v. *Vaughan* (1696), Holt (K. B.), 689; *R.* v. *Cook* (1696), 13 State Tr. 311, 348; *R.* v. *Goodere* (1741), 17 State Tr. 1003, at 1015; *Selfe* v. *Isaacson* (1858), 1 F. & F. 194). The application may be made at any time (*Southey* v. *Nash* (1837), 7 C. & P. 632; *R.* v. *Murphy* (1837), 8 C. & P. 297, at p. 307). The prosecutor was included in the order in *R.* v. *Newman* (1852), 3 Car. & Kir. 252, at p. 260, as it was proposed to examine him as a witness, *sed quære.* The defendant on a charge of felony must remain in court throughout the trial, unless he is removed for disorderly conduct (see *R.* v. *Berry* (1897), Roscoe, Criminal Evidence, 13th ed., 165, 166; *R.* v. *Brown* (1906), 41 L. J. 612; Stephen, Digest of Criminal Procedure, 194). A solicitor for either party is entitled to remain in court, although it is proposed to examine him (*Pomeroy* v. *Baddeley* (1826), Ry. & M. 430). Expert witnesses are generally excluded from the order. If a witness disobeys the order and remains in court, he may be punished for contempt, but his evidence, though open to observation, is not thereby made inadmissible (*Chandler* v. *Horne* (1842) 2 Mood. & R. 423; *Cobbett* v. *Hudson* (1852), 1 E. & B. 11, 14; *Cook* v. *Nethercote* (1835), 6 C. & P. 741; *Thomas* v. *David* (1836), 7 C. & P. 350; *R.* v. *Colley* (1829), Mood. & M. 329). At the Central Criminal Court it is the regular practice for witnesses to be kept out of court until they are examined.

indictment, counsel for the prosecution should, unless there are exceptional reasons to the contrary, place him in the witness-box so that the defendant may have an opportunity of cross-examining him (*u*).

Witnesses not on the back of the indictment.

709. The prosecution may call witnesses who were not examined before the committing justices and whose names are not on the back of the indictment. Notice of intention to call such witnesses should be given to the defendant, and copies of their proofs should be supplied to the defendant and to the court (*v*). But, except in charges of treason, to which special rules apply (*w*), the failure to give such notice and copies of proofs does not render the additional evidence inadmissible (*x*).

When depositions of a witness may be read.

710. If the deposition of a witness has been taken on the preliminary inquiry before the committing justices (*y*), and the witness is at the time of the trial dead or so ill as not to be able to travel, or is kept out of the way by the procurement of the defendant (*z*), upon proof that the deposition was taken in the presence of the defendant and that he or his counsel or solicitor had opportunity to cross-examine the witness, and that the witness is dead or so ill as not to be able to travel, or is kept out of the way by the procurement of the defendant, the deposition, if it purports to be

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(*u*) *R.* v. *Simmonds* (1823), 1 C. & P. 84; *R.* v. *Beezley* (1830), 4 C. & P. 220; *R.* v. *Bull* (1839), 9 C. & P. 22; *R.* v. *Vincent* (1839), 9 C. & P. 91, at p. 106; *R.* v. *Bodle* (1833), 6 C. & P. 186; *R.* v. *Holden* (1838), 8 C. & P. 606; *R.* v. *Woodhead* (1847), 2 Car. & Kir. 520; *R.* v. *Edwards* (1848), 3 Cox, C. C. 82; *R.* v. *Thompson* (1876), 13 Cox, C. C. 181. If the counsel for the prosecution puts a witness in the box to enable the defendant to cross-examine him, and the defendant does cross-examine him, then counsel for the prosecution can re-examine the witness, but only on the points touched by the cross-examination (*R.* v. *Harris* (1836), 7 C. & P. 581; *R.* v. *Beezley*, *supra*). The defendant is entitled to inspect the indictment to see what witnesses' names are on the back of it (*R.* v. *Connor* (1845), 1 Cox, C. C. 233; *R.* v. *Lacey* (1848), 3 Cox, C. C. 517); but the court has no power to oblige a prosecutor to give to the defendant the names and addresses of the witnesses on the back of the indictment (*R.* v. *Gordon* (1842), 12 L. J. (M. C.) 84).

(*v*) *R.* v. *Ward* (1848), 2 Car. & Kir. 759. As to securing attendance of witnesses, see p. 321, *ante*. See also title EVIDENCE, and *R.* v. *Baines*, [1909] 1 K. B. 258.

(*w*) Treason Act, 1708 (7 Ann. c. 21), s. 14; and *R.* v. *Frost* (1839), 4 State Tr. (N. S.) 85.

(*x*) *R.* v. *Greenslade* (1870), 11 Cox, C. C. 412, disapproving of *R.* v. *Stiginani* (1867), 10 Cox, C. C. 552, which is inaccurately reported. See *R.* v. *Connor* (1845), 1 Cox, C. C. 233, which was decided before the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), when the defendant had no right to copies of the depositions. The failure to give notice and copies is a matter for observation, and might be a ground for postponing the trial (*R.* v. *Flannagan* (1884), 15 Cox, C. C. 403).

(*y*) Under the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17.

(*z*) The Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17, which now governs the admissibility in evidence of depositions taken under that Act, contains no provision for the deposition being read, if a witness is kept out of the way by the procurement of the defendant; but if a witness is so kept out of the way, that is a ground for the deposition being used against the defendant who procures the absence of the witness, but not against any other co-defendant who is no party to the procuring (*R.* v. *Scaife* (1851), 17 Q. B. 238; see *R.* v. *Austen* (1856), 7 Cox, C. C. 55, C. C. R.).

SECT. 4. The Hearing.

signed by the justices by or before whom it purports to have been taken, may be read in evidence without further proof (*a*).

The deposition must have been taken at an inquiry into the same transaction as that which forms the subject-matter of the trial, but the charge need not be the same (*b*).

Depositions of witnesses taken before a coroner's jury.

711. The depositions of witnesses taken before a coroner's jury may be used in the cross-examination of the witnesses who made them, but cannot be used as direct evidence except to contradict the evidence of such witnesses, when such contradiction is permissible (*c*).

Statement of witness dangerously ill taken before a justice.

712. The statement taken by a justice (*d*) of a person dangerously ill may be used in evidence either for or against a defendant on his trial without further proof, if it purports to be signed by the justice by or before whom it purports to be taken and if the court is satisfied by evidence that the witness who made the statement is dead, or that there is no reasonable probability that he will be ever able to travel or to give evidence, and that reasonable notice in writing of the intention to take the statement was served upon the person against whom it is proposed to be read in evidence, and that such person or his counsel or solicitor had or might have had, if he had chosen to be present, full opportunity of cross-examining the person who made the statement (*e*).

(*a*) Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17. As to the meaning of "so ill as not to be able to travel," see *R.* v. *Riley* (1851), 3 Car. & Kir. 116; *R.* v. *Wicker* (1854), 18 Jur. 252; *R.* v. *Cockburn* (1857), Dears. & B. 203; *R.* v. *Day* (1852), 6 Cox, C. C. 55; *R.* v. *Wilson* (1861), 8 Cox, C. C. 453; *R.* v. *Stephenson* (1862), Le. & Ca. 165; *R.* v. *Ulmer* (1850), 4 Cox, C. C. 442; *R.* v. *Farrell* (1874), L. R. 2 C. C. R. 116; *R.* v. *Thompson* (1876), 13 Cox, C. C. 181; *R.* v. *Croucher* (1862), 3 F. & F. 285; *R.* v. *Wellings* (1878), 3 Q. B. D. 426, C. C. R.; *R.* v. *Goodfellow* (1879), 14 Cox, C. C. 326; *R.* v. *Harney* (1850), 4 Cox, C. C. 441; *R.* v. *Marsella* (1900), 17 T. L. R. 164. The question whether the evidence is sufficient to prove the conditions precedent to the admission of the depositions is one for the determination of the presiding judge (*R.* v. *Stephenson* (1862), Le. & Ca. 165). The evidence of a doctor to prove illness is not indispensable (*R.* v. *Riley, supra*; *R.* v. *Wellings, supra*), but is desirable (see *R.* v. *Welton, supra*; *R.* v. *Butcher* (1900), 64 J. P. 808).

(*b*) *R.* v. *Beeston* (1854), Dears. C. C. 405; *R.* v. *Williams* (1871), 12 Cox, C. C. 101.

(*c*) See p. 385, *post*. The practice formerly was to admit such depositions as direct evidence, if they were taken in the presence of the defendant; see *R.* v. *Rigg* (1866), 4 F. & F. 1085; Taylor on Evidence, 10th ed., I., 372. The coroner's depositions must be signed by the coroner and also by the witness (Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 4 (2)). In *R.* v. *Butcher* (1900), 64 J. P. 808, DARLING, J., is reported to have said that coroners' depositions now stand on the same footing as depositions taken before justices, and that the provisions of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17, apply to them. But those provisions, being expressly confined to cases of depositions before justices, cannot, it seems, apply to depositions taken before a coroner.

(*d*) Under the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 6 (see p. 327, *ante*).

(*e*) *Ibid.* See *R.* v. *Peacock* (1870), 12 Cox, C. C. 21; *R.* v. *Quigley* (1868), 18 L. T. 211; *R.* v. *Shurmer* (1886), 17 Q. B. D. 323, C. C. R.; *R.* v. *Curtis* (1904), 21 T. L. R. 87; *R.* v. *Rees, Times* 20th December, 1888. p. 10. A statement of a dying person taken at a hospital in compliance with the requirements of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17, may be admitted in evidence, although it is not admissible under the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 6; see *R.* v. *Katz* (1900), 64 J. P. 807.

Deposition of a child.

713. The deposition of a child taken under statutory authority (*f*) is admissible in evidence for or against a person accused of certain offences with regard to children (*g*), if the court is satisfied by the evidence of a registered medical practitioner that the attendance before the court of any child in respect of whom the offence is alleged to have been committed would involve serious danger to its life or health; such evidence is admissible without further proof, if it purports to be signed by the justice by or before whom it purports to be taken, and if it is proved that reasonable notice of the intention to take the deposition was served upon the person against whom it is proposed to use it as evidence and that that person or his counsel or solicitor had or might have had, if he had chosen to be present, an opportunity of cross-examining the child (*h*).

Close of case for the prosecution.

714. When the counsel for the prosecution has called all his witnesses and the defendant or his counsel has had an opportunity of cross-examining them, counsel for the prosecution generally puts in the statement of the defendant made before the justices and closes his case.

SUB-SECT. 2.—*The Defence.*

Submission of no case.

715. The defendant or his counsel may thereupon submit that there is no case to go to the jury or that there is a variance that cannot be amended between the indictment and the evidence.

Defendant called as a witness.

716. If there is no such submission, or if it is made and decided against the defendant (*i*), it is for the defendant at this stage, if he wishes to give evidence but calls no other witnesses, to give his evidence. If the defendant goes into the witness-box, he is liable to be cross-examined (*k*) on behalf of the prosecution, and also by or on behalf of any co-defendant with whom he is being tried and to whom his evidence is hostile (*l*); he may then be re-examined by counsel or by himself.

(*f*) Children Act, 1908 (8 Edw. 7, c. 67) (see p. 328, *ante*); Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17.

(*g*) *I.e.*, offences of cruelty within the meaning of the Children Act, 1908 (8 Edw. 7, c. 67), or any of the offences mentioned in the First Schedule to that Act (see these set out p. 408, *post*).

(*h*) Children Act, 1908 (8 Edw. 7, c. 67), s 29. As to other instances of depositions in criminal trials, see note (*b*), p. 387, *post*.

(*i*) The judge may of his own initiative stop the case if he thinks there is no evidence to go to the jury, but he need not do so (*R.* v. *George* (1908), 25 T. L. R. 66, C. C. A.). If there is such a submission and there is no case to go to the jury, it is the duty of the judge to direct a verdict of not guilty (*R.* v. *Leach* (1909), 2 Cr. App. Rep. 72).

(*k*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 2. As to the limit of such a cross-examination, see p. 404, *post*. As to a prisoner reading a statement in the witness-box, or having a statement read for him by someone else, see *R.* v. *Elliott* (1909), 2 Cr. App. Rep. 171. A prisoner should be distinctly told that he has a right to give evidence on his own behalf (*R.* v. *Warren* (1909), 25 T. L. R. 633).

(*l*) *R.* v. *Hadwen*, [1902] 1 K. B. 882, C. C. R. If a co-defendant, against whom the defendant has not given evidence, puts questions to the defendant on the co-defendant's own behalf, the defendant becomes a witness for the defence of the co-defendant who so examines him (*R.* v. *Burditt* (1855), 6 Cox, C. C. 458, 460, C. C. R.).

SECT. 4. The Hearing.

When counsel for the prosecution may sum up his case.

717. At the close of the defendant's evidence, if the defendant is the only witness for the defence, or if he does not give evidence, at the close of the evidence for the prosecution, counsel for the prosecution may, but only when the defendant is represented by counsel, sum up the case for the prosecution, and in so doing may comment on the evidence of the defendant, if he has given evidence, but if he has not given evidence, may not make any comment on the defendant's failing to give evidence (*m*).

Case for the defence.

718. After this the defendant or his counsel may address the jury, and if he calls no other witnesses or has not put in any evidence, he has the last word, unless the Attorney-General or Solicitor-General is conducting the prosecution; the defendant, if he has not given evidence on oath, may make a statement not on oath (*n*).

If there are more defendants than one, they address the jury and cross-examine witnesses in the order in which their names appear on the indictment, or in any order which the judge may think fit (*o*).

If a defendant intends to call witnesses other than himself, the defendant or his counsel must call such witnesses (*p*) after opening his case, and these witnesses may be cross-examined by counsel for the prosecution (*a*).

If there are more co-defendants than one being tried together, and one co-defendant calls evidence which is hostile to another defendant, the co-defendant may cross-examine such a witness (*b*).

Rebutting evidence.

719. After the witnesses for the defence have given their testimony, the evidence is closed, and the court will not allow fresh evidence to be given, but if any matter arises unexpectedly in the evidence called by the defence, such a matter may be answered by rebutting evidence on behalf of the prosecution (*c*).

(*m*) Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s. 2; *R.* v. *Gardner*, [1899] 1 Q. B. 150, C. C. R.; Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (b); see *R.* v. *Berens* (1865), 4 F. & F. 842; *R.* v. *Webb* (1865), 4 F. & F. 862; *R.* v. *Rudland* (1865), 4 F. & F. 495; *R.* v. *Puddick* (1865), 4 F. & F. 497; *R.* v. *Holchester* (1866), 10 Cox, C. C. 226. But if by reserving his defence before the justices the prosecution have been prevented from investigating the case set up by the defendant at the trial, comment may be made on that circumstance (*R.* v. *McNair* (1909), 25 T. L. R. 228, C. C. A.).

(*n*) See p. 402, *post*.

(*o*) See *R.* v. *Barber* (1844), 1 Car. & Kir. 434, at p. 438; *R.* v. *Balfour*, *Times*, 29th October, 1895, p. 4.

(*p*) Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s. 2. In *R.* v. *Nicholson* (1909), 2 Cr. App. Rep. 195, a conviction was quashed by the Court of Criminal Appeal, because witnesses for the defence who had attended at the trial were told that they were not wanted and went away without giving evidence.

(*a*) It is not usual for counsel for the prosecution to cross-examine witnesses to character, except when there is a previous conviction against the defendant who calls such witnesses.

(*b*) *R.* v. *Woods* (1853), 6 Cox, C. C. 224; *R.* v. *Burditt* (1855), 6 Cox, C. C. 458, C. C. R.

(*c*) *R.* v. *Haynes* (1859), 1 F. & F. 666; *R.* v. *Frost* (1839), 4 State Tr. (N. S.) 85, at p. 386; *R.* v. *Whelan* (1881), 14 Cox, C. C. 595. If evidence of good character is called on behalf of the defendant, the prosecution may give evidence of bad character (*R.* v. *Rowton* (1865), Le. & Ca. 520); but see *R.* v. *Burt* (1851),

Closing speeches.

720. After the close of the evidence for the defence, or if any rebutting evidence is allowed to the prosecution, after the close of such rebutting evidence, the defendant or his counsel may sum up his evidence (*d*), and the counsel for the prosecution has the right of reply (*e*).

SUB-SECT. 3.—*Judge's Summing up.*

Judge's summing up.

721. After the close of the reply of the counsel for the prosecution the presiding judge sums up the whole case and the evidence to the jury, gives his direction on the matters in issue and on the points of law applicable to these matters (*f*), and may give his opinion on such matters. Although the counsel for the prosecution may not comment on the failure of the defendant to give evidence, the judge, if he thinks right, may do so (*g*).

SUB-SECT. 4.—*View by Jury.*

View by jury.

722. The jury in a criminal trial may have a view of the *locus in quo*, if it is within the same county as that in which the trial takes place and if the court think that a view would be of service to them (*h*).

SUB-SECT. 5.—*Adjournment.*

Adjournment of hearing.

723. The court may adjourn the hearing of a criminal case from day to day or for part of a day (*i*).

Jury when allowed to separate.

During such adjournments, in all cases except those of treason, treason felony, and murder, the judge may allow the jury to separate at any time before they begin to consider their verdict (*j*).

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5 Cox, C. C. 284. It is not usual to give such evidence, except in the case of a previous conviction against the defendant (*R.* v. *Hughes* (1843), 1 Cox, C. C. 44).

(*d*) Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s. 2.

(*e*) It is not usual for counsel to exercise this right when the only witnesses called are witnesses to character. If there are several defendants and witnesses are called by only one or some of them, there is no right of reply except against the defendants who call evidence (*R.* v. *Hayes* (1838), 2 Mood. & R. 155; *R.* v. *Trevelli* (1882), 15 Cox, C. C. 289; *R.* v. *Kain* (1883), 15 Cox, C. C. 388).

(*f*) See Libel Act, 1792 (32 Geo. 3, c. 60), s. 2. See *R.* v. *Melville* (1909), 2 Cr. App. Rep. 173; *R.* v. *Stoddart* (1909), 25 T. L. R. 612, C. C. A., and p. 434, *post*, as to misdirections.

(*g*) *Kops* v. *R.*, [1894] A. C. 650, P. C.; *R.* v. *Rhodes*, [1899] 1 Q. B. 77, C. C. R.; if a prisoner reserves his defence before the committing magistrate and so prevents the defence set up at the trial being investigated, the prosecution may comment on such conduct (*R.* v. *McNair* (1908), 25 T. L. R. 228, C. C. A.).

(*h*) *Anon.* (1815), 2 Chit. 422; *R.* v. *Whalley* (1847), 2 Car. & Kir. 376; *R.* v. *Martin* (1872), L. R. 1 C. C. R. 378. Such a view may be had even after the judge's summing up (*R.* v. *Martin*, *supra*). If a view is desired in another county, the indictment must be removed by *certiorari* (see Crown Office Rules, 1906, r. 13; *R.* v. *Gyde* (1908), 72 J. P. 504).

(*i*) *R.* v. *Castro* (1874), L. R. 9 Q. B. 350, at p. 356; *R.* v. *Hardy* (1794), 24 State Tr. 199, 418; by a fiction of law all the days during which one assize or sessions lasts are treated as one day, but see *Whitaker* v. *Wisbey* (1852), 6 Cox, C. C. 109. As to adjournment for part of a day for the production of evidence or other good cause, see *R.* v. *Wenborn* (1842), 6 Jur. 267; *R.* v. *Foster* (1848), 3 Car. & Kir. 201; *R.* v. *Fernandez* (1861), 2 F. & F. 862, n.; *R.* v. *Tempest* (1858), 1 F. & F. 381; *R.* v. *Parr* (1862), 2 F. & F. 861; *R.* v. *Robson* (1864), 4 F. & F. 360; but see now Juries Detention Act, 1897 (60 Vict. c. 18).

(*j*) Juries Detention Act, 1897 (60 Vict. c. 18), s. 1. In cases where the

SECT. 4. The Hearing.

SUB-SECT. 6.—*Discharge of Jury in the Course of a Trial.*

Discharge of jury in the course of a trial.

724. The judge has power, whenever he deems proper, to discharge a jury in the course of the trial, and to swear a fresh jury and begin the trial of the case again. He is the sole judge of the propriety of such a course (*k*).

If a juror is incapacitated, the jury may be discharged and a fresh jury called, who may be the remainder of the former jury with another added to their number, but the defendant should be given his challenges afresh (*l*), and all the jurors should be resworn; the witnesses should be resworn and their oral evidence taken again (*m*).

SUB-SECT. 7.—*Verdict.*

Verdict.

725. At the close of the judge's summing-up the clerk of the court directs the jury to consider their verdict. They then confer together, and if they appear to have made up their minds, the clerk of the court asks them whether they are agreed on their verdict.

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judge has no power to allow the jury to separate, if the jury do separate in the course of the proceedings, the result is to make the trial bad, and the proper course is to discharge the jury and swear a fresh one and begin again (*R.* v. *Ward* (1867), 10 Cox, C. C. 573).

(*k*) This course was pursued in *R.* v. *Stevenson* (1791), 2 Leach, 546; *R.* v. *Streek* (1826), 2 C. & P. 413 (prisoner ill); *R.* v. *Scalbert* (1794), 2 Leach, 620; *R.* v. *Edwards* (1812), Russ. & Ry. 224 (juror ill); *R.* v. *Kinloch* (1746), Fost. 16 (where at the request of the defendant a jury was discharged in order that the defendant might withdraw a plea of not guilty and plead to the jurisdiction; *quære*, whether such a course would now be followed; see p. 355, *ante*); *R.* v. *Stokes* (1833), 6 C. & P. 151 (the trial was postponed at the request of the defendant owing to the absence of one of his witnesses); *R.* v. *Phillips* (1868), 11 Cox, C. C. 142 (where a juror who had not been summoned was sworn; and see *R.* v. *Metcalfe* (1848), 3 Cox, C. C. 220); *R.* v. *Macrae* (1892), Roscoe, Criminal Evidence, 13th ed., 189 (juror unlawfully separating himself from the jury and mingling with the public). It seems that it might be a good reason for discharging the jury, if undue practice had been used to keep witnesses out of the way, or to influence them in giving or withholding their evidence or where witnesses are prevented from giving evidence by sudden accidents (see *R.* v. *Charlesworth* (1861), 1 B. & S. 460, *per* COCKBURN, C.J., at p. 504). But it is not a good ground for discharging a jury merely that evidence for the Crown is not forthcoming or that a material witness for the Crown refuses to give evidence (*R.* v. *Lewis* (1909), 78 L. J. (K. B.) 722, C. C. A.; *R.* v. *Charlesworth*, *supra*); or that the prisoner has a relation on the jury (*R.* v. *Wardle* (1842), Car. & M. 647). It is not a sufficient ground for discharging a jury that a material adult witness is not sufficiently acquainted with the nature and obligation of an oath. Where in such a case a judge discharged a jury that the witness might have an opportunity of being instructed, the judges considered that the discharge was improper (*R.* v. *Wade* (1825), 1 Mood. C. C. 86). As to the discharge of a jury who cannot agree on their verdict, see *Winsor* v. *R.* (1866), L. R. 1 Q. B. 289; *ibid.*, 390, Ex. Ch.; and p. 374, *post*. The discharging of a jury is in the discretion of the judge, and his exercise of the discretion is not subject to review (*R.* v. *Lewis*, *supra*). As to irregularity in the proceedings not discovered till after verdict, see *R.* v. *Murphy* (1869), L. R. 2 P. C. 535.

(*l*) *R.* v. *Edwards*, *supra*; *R.* v. *Beere* (1842), 2 Mood. & R. 472.

(*m*) In *R.* v. *Bertrand* (1867), L. R. 1 P. C. 520, the Privy Council expressed an opinion that in a case of felony, when a jury who could not agree on their verdict had been discharged and a fresh jury sworn, it was irregular for the judge, even with the consent of the defendant, to read over from his notes the evidence given before the previous jury; this was the course followed in *R.* v. *Beere* (1843), 2 Mood. & R. 472, and in *R.* v. *Monson* (1903), 67 J. P. Jo. 267; but see *R.* v. *Lawrence* (1909), 25 T. L. R. 374 (felony), and in *R.* v. *Foster* (1836), 7 C. & P. 495 (misdemeanour).

If the foreman says "Yes," the clerk of the court asks them whether they find the defendant guilty or not guilty, and they deliver their verdict through the mouth of their foreman (*n*), and the verdict is recorded (*o*).

Different kinds of verdict.

The verdict may be either a general verdict of guilty or not guilty on the whole charge, or a verdict of guilty on one part of the charge and not guilty on another part, or a special verdict which finds the facts of the case and reserves the legal inference to be drawn from them for the judgment of the court.

If several defendants are tried together, the jury may find one or more guilty and others not guilty (*p*).

Conviction of defendant of an offence different from that charged in the indictment.

726. A jury cannot at common law convict a defendant of an offence of an entirely different character from that named in the indictment (*q*), *e.g.*, if the charge is one of felony, they cannot at common law find the defendant guilty of a misdemeanour, and if the charge is a misdemeanour, they cannot find a verdict of guilty of a felony.

They may, however, at common law, convict of a cognate offence of the same character but of a less aggravated nature, if the words of the indictment are wide enough to cover such an offence (*r*).

(*n*) See *R.* v. *Wooller* (1817), 2 Stark. 111. In general the assent of all the jury to the verdict pronounced by the foreman in their presence and hearing will be conclusively inferred; *aliter*, when it is uncertain whether they all heard the verdict (*ibid.*). If a verdict is pronounced and one of the jury is so drunk or otherwise incapable that he cannot or does not assent, a conviction in such a case would, it seems, be bad (see *Ex parte Morris* (1907), 72 J. P. 5).

(*o*) See 1 Chitty, Criminal Law, 636, for the form of entry. In a misdemeanour by consent of the defendant, the verdict may be pronounced out of court, *e.g.*, at the judge's house (*R.* v. *Woodfall* (1770), 20 State Tr. 895, 903). As to amending a verdict after entry, see *R.* v. *Virrier* (1840), 12 Ad. & El. 317.

(*p*) See as to joint receivers, Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 94. On an indictment for a riot against three or more, if the jury acquit all but two and find two guilty, the verdict amounts to an acquittal of the two, unless the indictment charges them with having made a riot with other persons not being tried (2 Hawk. P. C., c. 47, s. 8; *R.* v. *Beach* (1909), 2 Cr. App. Rep. 189). The result is similar in a case of conspiracy, if the jury acquit all the defendants but one (*R.* v. *Thompson* (1851), 16 Q. B. 832; *R.* v. *Manning* (1883), 12 Q. B. D. 241; *R.* v. *Plummer*, [1902] 2 K. B. 339, C. C. R.). Where a charge is against several defendants for conspiring together to do several illegal acts, a finding by the jury that one of them is guilty of conspiring with some of the defendants to do one of the acts and guilty of conspiring with other defendants to do another of the acts is bad as amounting to a finding that the defendant is guilty of two conspiracies, whereas the charge is only of one (*O'Connell* v. *R.* (1844), 11 Cl. & Fin. 155, H. L.). Where a charge was against eight defendants for conspiring to effect certain objects, and the jury found three of the defendants guilty generally and four of them guilty of conspiring to effect some of the objects and not guilty of conspiring to effect the other objects, the verdict was held to be bad and repugnant (*O'Connell* v. *R.*, *supra*).

(*q*) *R.* v. *Thomas* (1875), L. R. 2 C. C. R. 141; *R.* v. *Woodhall* (1872), 12 Cox, C. C. 240; *R.* v. *Catherall* (1875), 13 Cox, C. C. 109.

(*r*) *R.* v. *Hollingberry* (1825), 4 B. & C. 329; *R.* v. *Hunt* (1811), 2 Camp. 583. On an indictment for murder a defendant may at common law be convicted of manslaughter (*Mackalley's Case* (1611), 9 Co. Rep. 65 a, 67 b). On a charge of burglary and stealing or of robbery, the jury may find a verdict of larceny (2 Hale, P. C. 302). On a charge of burglary with intent to steal the jury may find a verdict of housebreaking or of stealing in a dwelling-house or of simple larceny (*R.* v. *Compton* (1828), 3 C. & P. 418; *R.* v. *Bullock* (1825), 1 Mood. C. C.

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In cases provided for by statute a jury may find a defendant guilty of an offence different in nature from that charged in the indictment (*s*).

324, n.). On a charge of housebreaking a verdict of simple larceny may be found (*R.* v. *Brookes* (1842), Car. & M. 543; and see *R.* v. *Beaney* (1820), Russ. & Ry. 416). On a charge of assaulting, beating, wounding and occasioning actual bodily harm the jury may find a verdict of a common assault (*R.* v. *Oliver* (1860), Bell, C. C. 287; *R.* v. *Yeadon* (1861), Le. & Ca. 81; and see *R.* v. *Taylor* (1869), L. R. 1 C. C. R. 194; and *R.* v. *Day* (1870), 11 Cox, C. C. 505, C. C. R.); but on a charge of feloniously wounding the jury cannot find a verdict of a common assault. On a charge of assaulting and having unlawful carnal knowledge of a girl the jury may find a verdict of common assault (*R.* v. *Guthrie* (1870), L. R. 1 C. C. R. 241). On a charge of an indecent assault the jury may find a verdict of a common assault (*R.* v. *Bostock* (1893), 17 Cox, C. C. 700). On a charge of publishing a defamatory libel "knowing it to be false" the jury may find a verdict of merely publishing a defamatory libel (*Boaler* v. *R.* (1888), 21 Q. B. D. 284). On a charge of perjury the jury may find a verdict of guilty of the common law misdemeanour of taking a false oath (*R.* v. *Hodgkiss* (1869), L. R. 1 C. C. R. 212). If two persons are jointly indicted for a joint offence and the jury find them guilty of separate offences, judgment cannot be given against both, but on a pardon or *nolle prosequi* being entered against one, judgment may be given against the other (*R.* v. *Hempstead* (1818), Russ. & Ry. 344). The jury may acquit one and find the other guilty (*R.* v. *Gray* (1851), 2 Den. 86; *R.* v. *Rendle* (1909), 2 Cr. App. Rep. 33). But on an indictment for burglary and larceny against two, one may be found guilty of the burglary and larceny and the other of the larceny only (*R.* v. *Butterworth* (1823), Russ. & Ry. 520).

(*s*) On an indictment for embezzlement or fraudulent application or disposition of property, the defendant may be found guilty of simple larceny, or larceny as a clerk or servant or person employed in the public service or police, and on an indictment for simple larceny the defendant may be found guilty of embezzlement or fraudulent application or disposition of property (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 72). A defendant on an indictment for false pretences may be found guilty, even though it appears that the offence amounted to larceny (*ibid.*, s. 88); but there is no provision enabling a defendant indicted of larceny to be found guilty, if the offence amounts to false pretences. If a person is indicted for robbery, he may be found guilty of an assault with intent to rob (*ibid.*, s. 41). If on the trial of any person for a misdemeanour it appears that the offence amounts to a felony, the defendant is not entitled on that ground to be acquitted of the misdemeanour, but the defendant cannot afterwards be prosecuted for the felony on the same facts, unless the court discharges the jury and directs the defendant to be indicted for the felony (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 12). On an indictment for murder the defendant may be found guilty of concealment of the birth of the child alleged to be murdered (Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 60). On an indictment for any felony except murder or manslaughter, if the defendant is charged with cutting, stabbing, or wounding any person, the jury may acquit the defendant of the felony and find him guilty of unlawfully cutting, stabbing or wounding (Prevention of Offences Act, 1851 (14 & 15 Vict. c. 19), s. 5). On an indictment for feloniously shooting with intent to do grievous bodily harm the defendant cannot under the Prevention of Offences Act, 1851 (14 & 15 Vict. c. 19), s. 5, be found guilty of unlawful wounding (*R.* v. *Miller* (1879), 14 Cox, C. C. 356). On an indictment for manslaughter of a person under sixteen, the jury may find the defendant guilty of an offence of cruelty under the Children Act, 1908 (8 Edw. 7, c. 67), s. 12 (4). On an indictment for the felony of administering poison or other destructive or noxious thing so as thereby to endanger the life of such person or to inflict upon him any grievous bodily harm, a defendant may be found guilty of the misdemeanour of administering etc. poison etc. to a person with intent to injure, aggrieve, or annoy such person (Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 25; and see ss. 23, 24). If a person is indicted of the felony of the riotous demolition of buildings under s. 11 of the Malicious Damage Act,

727. Where a special verdict (*t*) is returned, it is for the court to draw such inference and to direct a verdict of guilty or not guilty to be entered (*a*).

Special verdict.

The jury may also find a special verdict to the effect that the defendant was guilty of the act or omission charged against him, but was insane at the time when he did the act or made the omission (*b*).

Verdict of insanity.

Reconsidering the verdict.

728. A judge is not bound to receive at once the first verdict which the jury bring in; he may direct them to reconsider it (*c*). If their verdict is meaningless or inconsistent, he may refuse to accept it. If, however, they insist on a general verdict of guilty or not guilty, the judge must accept it (*d*).

Correction of verdict.

729. If a verdict is entered which is not in accordance with the intention of the jury, the mistake may be corrected and a verdict

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1861 (24 & 25 Vict. c. 97), he may be found guilty of the misdemeanour of riotously injuring such buildings (Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 12). If a person is indicted for rape or for the unlawful carnal knowledge of a girl under the age of thirteen under s. 4 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), he may be found guilty of an offence under ss. 3, 4, or 5 of that Act or of an indecent assault (*ibid.*, s. 9). On an indictment for a corrupt practice at an election a defendant may be found guilty of an illegal practice (Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 52). If a person is indicted for any felony or misdemeanour, he may be found guilty of an attempt to commit the felony or misdemeanour charged (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 9; see *R.* v. *Brown* (1889), 24 Q. B. D. 357, C. C. R.; *R.* v. *Ring* (1892), 61 L. J. (M. C.) 116, C. C. R.; and *R.* v. *Williams*, [1893] 1 Q. B. 320, C. C. R.). But see *R.* v. *M'Pherson* (1857), Dears. & B. 197, where it was held that a defendant could not be convicted of an attempt to steal goods from a house when there were no goods there. This case is, however, of doubtful authority having regard to the decisions last mentioned. See also *R.* v. *Connell* (1853); 6 Cox, C. C. 178; *R.* v. *Hapgood and Wyatt* (1870), L. R. 1 C. C. R. 221.

(*t*) See p. 371, *ante*; *R.* v. *Dudley* (1884), 14 Q. B. D. 273, 560; *R.* v. *Staines Local Board* (1888), 52 J. P. 215.

(*a*) *R.* v. *Farnborough*, [1895] 2 Q. B. 484, C. C. R., *per* POLLOCK, B., at p. 486; see *R.* v. *Naylor* (1865), L. R. 1 C. C. R. 4, at p. 6. The judge cannot ask the jury whether they believe the evidence for the prosecution and, on their saying they do, enter a verdict of guilty (*R.* v. *Farnborough*, *supra*). It is doubtful whether a judge can lawfully put certain specific questions to the jury and, on their answering them in a particular way, direct them to find a particular verdict (see *R.* v. *Jameson* (1896), Shorthand Notes, p. 396, where a verdict of guilty was extracted by this means from an unwilling jury. See O'Brien, Life of Lord Russell of Killowen, p. 282). If, after the jury have given a special verdict, the court enters a general verdict of guilty, an appeal will lie to the Court of Criminal Appeal (see Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 5 (3); see *R.* v. *Knight* (1908), 1 Cr. App. Rep. 186; *R.* v. *Muirhead* (1908), 1 Cr. App. Rep. 189). If no general verdict is given, it seems that the proper course is to move the record into the King's Bench Division (see *R.* v. *Dudley*, *supra*). If the finding of the jury is ambiguous or inconsistent, and a verdict of guilty has been entered on it, the conviction will be quashed (*R.* v. *Gray* (1891), 17 Cox, C. C. 299, C. C. R.), but see *R.* v. *Petch* (1909), 25 T. L. R. 401, C. C. A.

(*b*) Trial of Lunatics Act, 1883 (46 & 47 Vict. c. 38), s. 2 (1). The effect of this verdict is that the court orders the defendant to be kept in custody as a criminal lunatic till the King's pleasure shall be known (see p. 242, *ante*).

(*c*) *R.* v. *Meany* (1862), Le. & Ca. 213.

(*d*) *R.* v. *Meany*, *supra*, at p. 216, *per* POLLOCK, C.B.; *R.* v. *Yeadon* (1861), Le. & Ca. 81.

SECT. 4. The Hearing.

entered in accordance with their intention, or they may retire and reconsider the question and bring in another verdict (*e*).

Retirement of jury.

730. If the jury cannot in court within a reasonable time agree on their verdict, they may be ordered to retire to a room, and a bailiff is sworn to keep them apart (*f*). They must not separate from the time when they have been directed to consider their verdict until the time when they deliver their verdict or are discharged (*g*).

Discharge if jury cannot agree.

If the jury cannot agree upon a verdict, they may, at the discretion of the judge, be discharged without giving a verdict, but such a discharge does not amount to an acquittal, and the defendant may be tried again (*h*).

Verdict of not guilty.

731. If the verdict is one of not guilty, the defendant must be immediately discharged, unless there is another indictment against him on which it is proposed to proceed (*i*).

Special verdict.

If the jury find the facts in a special verdict, the defendant may be detained in custody or admitted to bail until judgment is given.

Previous conviction.

If the verdict is one of guilty and there is another count in the indictment against the prisoner charging him with having been previously convicted, he is arraigned on that count. If he pleads not guilty to the count alleging a previous conviction, the jury, without being resworn, are charged to inquire concerning the alleged previous conviction; evidence is given to prove it (*k*), and the jury give their verdict on the count alleging it.

(*e*) *R.* v. *Parkin* (1824), 1 Mood. C. C. 45; *R.* v. *Vodden* (1853), Dears. C. C. 229 (where the correction was made when the defendant had been discharged and had left the dock, and the prisoner was brought back and sentenced).

(*f*) 2 Hale, P. C. 296, 297. They may, at the discretion of the judge, be allowed the use of a fire when out of court, and may be allowed reasonable refreshment to be procured at their own expense (Juries Act, 1870 (33 & 34 Vict. c. 77), s. 23). In *R.* v. *Newton* (1849), 13 Q. B. 716, at p. 735, ROLFE, B., it seems, allowed a surgeon to attend one of the jurors.

(*g*) 4 Bl. Com. 354.

(*h*) *Winsor* v. *R.* (1866), L. R. 1 Q. B. 390, Ex. Ch.; *R.* v. *Newton* (1849), 13 Q. B. 716. If a verdict is so insufficiently expressed or so ambiguous that a judgment cannot be founded upon it, it seems that the court may discharge the jury and award a *venire de novo* (see *R.* v. *Murphy* (1869), L. R. 2 P. C. 535, at p. 548, and compare *R.* v. *Woodfall* (1770), 20 State Tr. 895, 903, 917). *Quære*, whether any court except the court of trial now has the power to award a *venire de novo*. The Court of Criminal Appeal has no such power; see Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20 (1)), and p. 433, *post*.

(*i*) Gaol Fees Abolition Act, 1815 (55 Geo. 3, c. 50), ss. 4, 5, 9, 13; Gaol Fees Abolition Act, 1845 (8 & 9 Vict. c. 114); *Mee* v. *Cruikshank* (1902), 20 Cox, C. C. 210. A defendant on a charge of misdemeanour is, on acquittal, entitled to a copy of the record (3 Russell on Crimes, 6th ed., 463). On the question whether a defendant acquitted on a charge of felony is entitled to a copy of the record the authorities are conflicting (*R.* v. *Brangan* (1742), 1 Leach, 27; *Groenvelt* v. *Burrell* (1697), 1 Ld. Raym. 252; *Browne* v. *Cumming* (1829), 10 B. & C. 70).

(*k*) This is usually done by producing a certificate of the conviction under the hand of the clerk of the court or other officer having the custody of the records of the court where the conviction took place (Evidence Act, 1851 (14 & 15 Vict. c. 99), s. 13), and by calling a witness to prove that the person

Respite.

732. If there is no count alleging a previous conviction, or if there is one and the jury have given their verdict on it, the court in charges of treason and felony demands of the prisoner whether he has or knows anything to say why judgment should not be pronounced against him (*l*).

If the defendant is a female and she has been found guilty of a capital charge, she may allege that she is quick with child, and thereupon a jury of twelve matrons must be impannelled and sworn to try whether or not this is the case. This they do by inspection of the defendant, but it is usual to give them the assistance of a surgeon in their examination. If the jury of matrons finds that she is quick with child, the court respites the offender until she is delivered of a child, or until the expiration of the ordinary period of gestation (*m*). Upon her delivery, or when such time has elapsed, unless she has been reprieved by the Crown, she should again be brought into court and asked whether she has anything to allege why execution should not be awarded (*n*). It would seem that she cannot then allege a new pregnancy (*o*).

Motion in arrest of judgment.

733. Any prisoner may, by himself or his counsel, move the court in arrest of judgment.

The grounds of this motion may be an objection appearing on the face of the record, such as want of certainty in the indictment or omission or insufficient statement of some material allegation, where such defect is more than formal and has not been amended or cured by verdict. The granting of a pardon after the arraignment is also a ground for moving in arrest of judgment (*p*).

The court may itself without motion arrest judgment, if it is of opinion that no offence in law is disclosed in the indictment (*q*).

If judgment is arrested, an acquittal is entered and the defendant is entitled to be discharged, unless there is another indictment against him, but the acquittal is no bar to a fresh indictment (*r*).

Respite of judgment.

734. If judgment is not arrested, it may on good grounds be respited, except in the case of a conviction for murder (*s*).

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mentioned in the conviction is the same person as the defendant (see *R.* v. *Drabble* (1909), 53 Sol. Jo. 449).

(*l*) This is called the *allocutus*. In misdemeanours the defendant is not called upon (1 Chitty, Criminal Law, 652). For form of the *allocutus*, see 4 Chitty, Criminal Law, 364.

(*m*) 1 Chitty, Criminal Law, 759; *R.* v. *Baynton* (1702), 14 State Tr. 598, 634. See *R.* v. *Wycherley* (1838), 8 C. & P. 262; *R.* v. *Hunt* (1847), 2 Cox, C. C. 261; Taylor, Medical Jurisprudence, Vol. II., 39.

(*n*) 1 Hale, P. C. 369.

(*o*) 3 Co. Inst. 17; 2 Hawk. P. C., c. 51, s. 10; 1 Hale, P. C. 369; 2 *ibid.*, 413; see also 1 Chitty, Criminal Law, 760, 761.

(*p*) See note (*o*), p. 355, *ante*. A defendant must be in court when a motion in arrest of judgment is made (*R.* v. *Spragg* (1760), 2 Burr. 930).

(*q*) *R.* v. *Waddington* (1800), 1 East, 143, 146. As to the effect of the repeal of a statute on which an indictment was founded, see *R.* v. *Denton* (1852), Dears. C. C. 3; *R.* v. *Mawgan* (*Inhabitants*) (1838), 8 Ad. & El. 496; *R.* v. *McKenzie* (1820), Russ. & Ry. 429.

(*r*) *Vaux's Case* (1591), 4 Co. Rep. 44 a, 45 a.

(*s*) *Keen* v. *R.* (1847), 10 Q. B. 928; stat. 1 Edw. 6, c. 7, s. 5. Judgment on

Delivery of judgment.

735. If judgment is not arrested or respited, the court proceeds then or subsequently to deliver judgment.

In cases of treason and felony the defendant must be present when judgment is given (*t*). In cases of misdemeanour the presence of the defendant is not necessary, but is usually required, unless the judgment is merely to pay a fine, or there is good cause for his absence (*u*).

Before judgment is given, the court may, in cases where the court has a discretion as to what punishment it shall award (*w*), hear evidence for the Crown or the defendant on the question what punishment should be awarded (*x*).

Judgment must be pronounced orally in open court; if there is only one presiding judge, the judgment is pronounced by him; in trials at bar the practice is for the senior puisne judge to deliver judgment (*a*).

If there has been a verdict of guilty on more counts than one, the proper course is to deliver and enter up a separate judgment on each count (*b*).

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conviction for murder cannot be respited (Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 2). In cases to which the Judgment of Death Act, 1823 (4 Geo. 4, c. 48), applies (*i.e.*, offences under the Dockyards etc. Protection Act, 1772 (12 Geo. 3, c. 24), and the Piracy Act, 1837 (7 Will. 4 & 1 Vict. c. 88), s. 2), if the court is of opinion that the offender is a fit and proper person to be recommended to the royal mercy, the court may abstain from pronouncing judgment of death upon him, and may order the judgment to be entered on record (Judgment of Death Act, 1823 (4 Geo. 4, c. 48), s. 1; Central Criminal Court Act, 1837 (7 Will. 4 & 1 Vict. c. 77), ss. 1, 3—7).

(*t*) *R.* v. *Bethell* (1696), 1 Ld. Raym. 47; *R.* v. *Harris* (1697), 1 Ld. Raym. 267.

(*u*) *R.* v. *Harwood* (1738). 2 Stra. 1088; *R.* v. *Williams* (1870), 18 W. R. 806; *R.* v. *Constable* (1826), 7 Dow. & Ry. (K. B.) 663; *R.* v. *Kinglake* (1870), 18 W. R. 806; *R.* v. *Boltz* (1826), 5 B. & C. 334; *R.* v. *Woodward* (1831), 4 C. & P. 540, n.; *R.* v. *Chichester* (1851), 17 Q. B. 504, n. If the defendant is absent without good cause, a warrant may be issued for his arrest, and if the proceedings are in the King's Bench Division and he is under recognisance to appear and receive judgment, the recognisance will be estreated and a warrant issued for his arrest (*R.* v. *Chichester*, *supra*).

(*w*) The court has no discretion in cases of murder (Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 2), or treason (Treason Act, 1814 (54 Geo. 3, c. 146), s. 1, but as to children see Children's Act, 1908 (8 Edw. 7, c. 67), s. 103), or of offences against the Dockyards etc. Protection Act, 1772 (12 Geo. 3, c. 24), s. 1, or of piracy (Offences at Sea Act, 1536 (28 Hen. 8, c. 15), s. 2; stat. (1698-9) 11 Will. 3, c. 7, ss. 7, 8; Piracy Act, 1837 (7 Will. 4 & 1 Vict. c. 88), s. 2; but judgment for offences against the Dockyards etc. Protection Act, 1772 (12 Geo. 3, c. 24), and the Piracy Act, 1837 (7 Will. 4 & 1 Vict. c. 88), may be recorded instead of being pronounced). In all other cases, it seems, the court has a discretion within certain limits.

(*x*) See *R.* v. *Dignam* (1837), 7 Ad. & El. 593; *R.* v. *Cox* (1831), 4 C. & P. 538, 540; *R.* v. *Withers* (1789), 3 Term Rep. 428; *R.* v. *Lloyd* (1832), 4 B. & Ad. 135; Crown Office Rules, 1906, r. 170; *R.* v. *Ellis* (1826), 6 B. & C. 145, 148. As to evidence of character and previous conviction see p. 382, *post*.

(*a*) See *R.* v. *Lynch* (1903), 19 T. L. R. 163, at p. 179. As to recording judgment of death, see *supra*. As to judgments by justices of *nisi prius* in treason and felony, see stat. (1435) 14 Hen. 6, c. 1.

(*b*) See *Campbell* v. *R.* (1849), 11 Q. B. 799; *O Connell* v. *R.* (1844), 11 Cl. & Fin. 155, H. L.; *Castro* v. *R.* (1881), 6 App. Cas. 229.

Entry of judgment etc.

736. After the judgment has been pronounced, a minute of the judgment is entered on the indictment and in the book kept for that purpose by the clerk of the court (*c*).

The court may at any time during the same assizes or sessions before the judgment has been entered on the record vacate the judgment passed and substitute another (*d*).

When the judgment has been entered on the record, it cannot be altered, but can be reversed or amended by the Court of Criminal Appeal (*e*).

Part VI.—Evidence in Criminal Cases.

SECT. 1.—*General Rules.*

General rules of evidence the same in criminal and in civil cases.

737. The rules of evidence which govern the proof of facts in a criminal trial are substantially the same as those which apply in a civil trial (*f*), but there are some particular points of difference arising from the special nature of criminal proceedings.

The rules of evidence may be classified under three main heads, (1) those which deal with the burden of proof; (2) those which determine what facts are relevant, and must or may be proved; (3) those which determine the method of proof. All these points are questions of law to be determined by the judge, while the weight of any facts proved, if a case is left to the jury, is a question for the jury to determine.

SUB SECT. 1.—*The Burden of Proof.*

Burden of proof.

738. In order to decide on whom the burden of proof lies, it is necessary to consider what is the issue or point in dispute. The issue is determined by the pleadings.

In criminal proceedings the prosecution in the indictment alleges

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(*c*) It appears that a formal judgment is not drawn up, except when the record is made up for the purposes of a *certiorari* or writ of error (Stephen, History of the Criminal Law, Vol. I., 309). But writs of error are now abolished (Criminal Appeal Act, 1907 (7 Edw. 7 c. 23), s. 20 (1)). As to entry of judgment, see *Campbell* v. *R.* (1849), 11 Q. B. 799; *O'Connell* v. *R.* (1844), 11 Cl. & Fin. 155, H. L.; *R.* v. *Powell* (1831), 2 B. & Ad. 75; *Ryalls* v. *R.* (1848), 11 Q. B. 781, 798; *Gregory* v. *R.* (1850), 15 Q. B. 974, Ex. Ch.; *Holloway* v. *R.* (1851), 17 Q. B. 317.

(*d*) *R.* v. *Price* (1805), 6 East, 323, 328; *R.* v. *Leicestershire Justices* (1813), 1 M. & S. 442.

(*e*) *R.* v. *Fox* (1866), 10 Cox, C. C. 502; *R.* v. *Horn* (1883), 15 Cox, C. C. 205, C. C. R.; *R.* v. *Turner*, [1904] 1 K. B. 181, C. C. R.; see Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), ss. 4 (3), 5. As to the grounds on which judgment may be set aside, see p. 434, *post*.

(*f*) *A.-G.* v. *Le Merchant* (1772), cited in *R.* v. *Watson* (1788), 2 Term Rep. 202, n.; *R.* v. *Burdett* (1820), 4 B. & Ald. 95, at p. 122; *R.* v. *Watson* (1817), 2 Stark. 116, 155; *R.* v. *Murphy* (1837), 8 C. & P. 297, 306; *R.* v. *Francis* (1874), L. R. 2 C. C. R. 128, at p. 133. As to the general rules of evidence, see title EVIDENCE. It is a rule of prudence rather than law that requires more stringent proof in criminal than in civil cases (*R.* v. *White* (1865), 4 F. & F. 383; *R.* v. *Hobson* (1823), 1 Lew. C. C. 261; *R.* v. *Blandy* (1752), 18 State Tr. 1118, *per* LEGGE, B., at 1186).

SECT. 1. General Rules.

certain facts. The defendant is called upon to plead to the indictment. If he pleads guilty, he admits that he is guilty of the offence as charged in the indictment, but not necessarily the truth of the facts stated in the depositions (*g*). If he pleads the general issue, *i.e.*, not guilty, he denies all these facts and thus raises the issue whether the facts alleged in the indictment are true or not. A defendant may also plead one or more of certain special pleas (*a*), by which he affirms that certain facts are true; the prosecution then either traverses or admits the special plea.

He who affirms must prove.

The general rule of evidence is that he who affirms must prove; therefore, a defendant who pleads not guilty throws upon the prosecution the burden of proving that the facts alleged in the indictment are true, and, if he pleads a special plea and the prosecution traverses it, the burden is upon the defendant of proving that the facts alleged in his plea are true.

SUB-SECT. 2.—*Relevant Facts.*

Facts that must or may be proved.

739. A party can only prove facts relevant to his case, and it is only the party on whom the burden of proof lies who is bound to prove any facts at all.

In all criminal trials, where the defendant pleads not guilty, the burden of proof is on the prosecution, who must prove the facts that are alleged in the indictment, and may prove any other facts which help to prove those facts. If the prosecution does not give sufficient proof of the alleged facts so as to establish a *primâ facie* case, the case must be withdrawn from the jury and a verdict of "not guilty" directed (*b*).

The defendant, unless he pleads a special plea, need not give any evidence at all; he may content himself with attempting to destroy the case for the prosecution or to prove his own innocence by cross-examination of the witnesses for the prosecution. If he adduces evidence, it must be relevant to his case, that is, it must tend to disprove the facts alleged by the prosecution or to prove his own innocence.

Proof of *corpus delicti*.

740. The prosecution must first give satisfactory proof of the *corpus delicti*, *i.e.*, must prove that the offence charged has been committed by someone (*c*). The prosecution must then prove that

(*g*) See *R.* v. *Riley*, [1896] 1 Q. B. 309, C. C. R., *per* HAWKINS, J., at p. 318.

(*a*) *E.g.*, a plea to the jurisdiction, of *autrefois convict* or *autrefois acquit*, of a pardon, of justification in libel, and of an obligation to repair a highway *ratione tenuræ*; see p. 355, *ante*. A defendant may also demur to the indictment, but this only raises an issue of law, not an issue of fact.

(*b*) See *R.* v. *Stoddart* (1909), 25 T. L. R. 612, C. C. A.

(*c*) See 2 Hale, P. C. 290; *R.* v. *Burdett* (1820), 4 B. & Ald. 95, at p. 162; *Evans* v. *Evans* (1790), 1 Hag. Con. 355, *per* Sir WILLIAM SCOTT, at p. 105. The *corpus delicti* may be proved by direct evidence or by irresistible grounds of presumption (*ibid.*). It is doubtful whether it must be established by some evidence other than the mere confession of the accused (1 Phillipps on Evidence, 10th ed., 406; *R.* v. *Flaherty* (1847), 2 Car. & Kir. 782; *R* v. *Wheeling* (1789), 1 Leach, 311; *R.* v. *White* (1823), Russ. & Ry. 508; *R.* v. *Falkner* (1822), Russ. & Ry. 481; *R.* v. *Tippet* (1823), Russ. & Ry. 509; *R.* v. *Eldridge* (1821), Russ. & Ry. 440; *R.* v. *Tuffs* (1831), 5 C. & P. 167; *R.* v. *Burton* (1854), Dears. C. C. 282; *R.* v. *Edgar* (1831), 3 Russell on Crimes, 6th ed., 478, n., *per* PATTESON, J.; *R.* v. *Sutcliffe* (1850), 4 Cox, C. C. 270; *R.* v. *Unkles* (1873), 8 I. R. C. L. 50, *per* FITZGERALD,

Res gestæ.

the defendant is the person who committed the offence charged. Any facts which affirmatively prove either of these propositions are relevant evidence for the prosecution (*d*).

All the details of the alleged criminal transaction are relevant to the case for the prosecution as being part of the *res gestæ* and should be proved.

J., at p. 57; *R.* v. *Sullivan* (1887), 16 Cox, C. C. 347). In charges of murder or manslaughter a conviction can never, it seems, take place unless the body of the person whom the prisoner is accused of having murdered is found or there is evidence, either direct or circumstantial, of the death of the person said to be murdered (see 3 Co. Inst. 232; 2 Hale, P. C. 290; *R.* v. *Downing* (1822), Wills on Circumstantial Evidence, 5th ed., 240; *R.* v. *Hindmarsh* (1792), 2 Leach, 569; *R.* v. *Hopkins* (1831), 8 C. & P. 591; *R.* v. *Tawell* (1845), Wills on Circumstantial Evidence, 5th ed., *per* PARKE, B., at p. 316). It seems, therefore, that in charges of murder a mere confession without proof of the finding of the body or of the death of the person alleged to be murdered is insufficient (see *Anon.*, 1 Leach, 264, n.). According to MAULE, J. (*R.* v. *Burton*, *supra*, at p. 54), the rule as to the *corpus delicti* is a rule of caution and prudence in cases of murder and manslaughter, and not an absolute rule of evidence. In cases of concealment of birth the dead body of the child must be found and identified (*R.* v. *Williams* (1871), 11 Cox, C. C. 684). As to proof of the *corpus delicti* in cases of libel, see *R.* v. *Burdett* (1820), 4 B. & Ald. 95. In charges of larceny there must be evidence that the goods mentioned in the indictment were stolen by someone (*R.* v. *Dredge* (1845), 1 Cox, C. C. 235), but it is not necessary always to prove that the prosecutor missed any of the goods alleged to be stolen, if from the facts proved the jury may infer that the goods were taken from him (2 East, P. C. 657; *R.* v. *Burton* (1854), 23 L. J. (M. C.) 52 C. C. R.; *R.* v. *Hooper* (1857), 1 F. & F. 85); in such a case the proof of the *corpus delicti* is inextricably bound up with proof of the connection of the defendant with it. But a person cannot be convicted of stealing goods of an unknown person, unless due proof is made that a felony was committed in respect of these goods (2 Hale, P. C. 290). In a charge of conspiracy general evidence of the existence of the conspiracy may first be given, before particular facts are proved which show that one or more of the defendants took part in it (*Queen Caroline's Case* (1820), 2 Brod. & Bing. 310, H. L.; see 2 Starkie on Evidence, 3rd ed., 327; *R.* v. *Deasy* (1883), 15 Cox, C. C. 334; *R.* v. *Hammond* (1799), 2 Esp. 719; *R.* v. *Hunt* (1820), 3 B. & Ald. 566; *R.* v. *Frost* (1839), 9 C. & P. 129, 475; *R.* v. *Sidney* (1683), 9 State Tr. 817, at p. 841; *R.* v. *Shellard* (1840), 9 C. & P. 277; *R.* v. *Desmond* (1868), 11 Cox, C. C. 146). As to a defendant being found guilty of an offence other than that with which he is charged, see p. 371, *ante*.

(*d*) See p. 378, *ante*. Thus, while it is not incumbent on the prosecution to prove motive (see p. 236, *ante*), yet evidence may be given for the prosecution to show that the defendant had a motive for committing the crime charged (see *R.* v. *Clewes* (1830), 4 C. & P. 221, at p. 226); and so evidence may be given for the defence to show that the defendant had no motive for committing the alleged crime, or that he had a motive for not committing it (*R.* v. *Grant* (1865), 4 F. & F. 322; *R.* v. *Bingham* (1811), Wills on Circumstantial Evidence, 5th ed., 217; *R.* v. *Downing* (1822), Wills on Circumstantial Evidence, 5th ed., 218). Where a special intent is of the essence of an offence (*e.g.*, assault with intent to murder), the special intent must be proved, and proof of a different intent will not suffice (*R.* v. *Pembliton* (1874), L. R. 2 C. C. R. 119; *R.* v. *Coppard* (1855), Wills on Circumstantial Evidence, 5th ed., 217; *R.* v. *Rooke* (1858), 1 F. & F. 107; but see *R.* v. *Woodburne* (1722), 16 State Tr. 53, at 80, 81). But a criminal intent may often be presumed from an act itself (*R.* v. *Mawgridge* (1707), 1 East, P. C. 276; *R.* v. *Maloney* (1861), 9 Cox, C. C. 6; *R.* v. *Farrington* (1811), Russ. & Ry. 207; *R.* v. *Ward* (1872), L. R. 1 C. C. R. 356). If it is proved that a person did an act which is criminal only if done by a person in a certain state of the mind (*e.g.*, receiving stolen goods with knowledge that they are stolen), such a state of mind cannot be inferred from the mere act itself and must be proved by accompanying circumstances or other facts (see *R.* v. *Oddy* (1851), 2 Den. 264, at p. 273).

SECT. 1. General Rules.

All acts done by the accused or by anyone in his presence or by anyone acting under his orders, and all statements, whether oral or written, made by him or by anyone in his presence or by his authority in his absence, either at the time of the alleged transaction or before or after it, are, if connected with the criminal transaction, relevant and may be proved (*e*).

Evidence must be confined to facts connected with the offence.

The evidence must be confined to the facts which constitute or are connected with the offence charged, and proof cannot generally be given of other facts which have no connection with this offence (*f*). If, however, there are other facts which are so inextricably mixed up with the facts which constitute the offence charged as to form one transaction, proof may be given of such other facts (*g*).

Suborning evidence.

741. The fact that an accused person has induced or attempted to induce another person to give false evidence on his behalf is relevant to the case for the prosecution and may be proved at the trial (*h*).

Guilty knowledge or intent.

742. Evidence cannot be given for the prosecution to prove that the defendant is of bad character (*i*) or has a propensity to commit criminal acts of the same nature as the offence charged (*j*).

But in cases where a guilty knowledge or intention or design is of the essence of the offence, proof may be given that the defendant did other acts similar to those which form the basis of the charge. Such acts may be proved, whether they were done before or after

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(*e*) See *R.* v. *Gordon* (*Lord George*) (1781), 21 State Tr. 486, 535; *R.* v. *Damaree* (1709), Fost. 214. As to confessions by the defendant, see p. 394, *post*. There is some doubt as to expressions used in the absence of the accused immediately after the act alleged to be done by the accused (see *R.* v. *Bedingfield* (1879), 14 Cox, C. C. 341, where, the defendant being charged with the murder of his wife by cutting her throat, the particulars of a statement made by the wife on coming with her throat cut out of the house where the prisoner was were not allowed by COCKBURN, C.J., to be given in evidence; but see *R.* v. *Morgan* (1875), 14 Cox, C. C. 337; *R.* v. *Foster* (1834), 6 C. & P. 325; *Aveson* v. *Kinnaird* (*Lord*) (1805), 6 East, 188, *per* Lord ELLENBOROUGH, C.J., at p. 193; *Thompson* v. *Trevanion* (1693), Skin. 402). As to a statement by a third party made out of the hearing of the defendant but immediately before the commission of an offence, see *R.* v. *Fowkes*, *Times* newspaper, 8th March, 1856; Stephen, Digest of the Law of Evidence, 4.

The fact that a person in respect of whom an outrage or injury is alleged to have been committed made a complaint to a third person soon after the alleged outrage or injury, although such complaint was made in the absence of the defendant, is admissible, and in cases of rape and similar offences the details of the complaint are admissible (see p. 394, *post*).

(*f*) *R.* v. *Butler* (1846), 2 Car. & Kir. 221; *R.* v. *Ollis*, [1900] 2 Q. B. 758, C. C. R., *per* CHANNELL, J., at p. 781.

(*g*) *R.* v. *Voke* (1823), Russ. & Ry. 531; *R.* v. *Ellis* (1826), 6 B. & C. 145; *R.* v. *Winkworth* (1830), 4 C. & P. 444; *R.* v. *Mansfield* (1841), Car. & M. 140; *R.* v. *Long* (1833), 6 C. & P. 179; *R.* v. *Bleasdale* (1848), 2 Car. & Kir. 765; *R.* v. *Cobden* (1862), 3 F. & F. 833; *R.* v. *Firth* (1869), L. R. 1 C. C. R. 172; *Ex parte Burnby*, [1901] 2 K. B. 458; *R.* v. *Welman* (1853), Dears. C. C. 188. "If several and distinct offences do intermix and blend themselves with each other, the detail of the party's whole conduct must be pursued" (*R.* v. *Whiley* (1804), 2 Leach, 983, *per* Lord ELLENBOROUGH, C.J., at p. 985).

(*h*) *R.* v. *Watt* (1905), 20 Cox, C. C. 852.

(*i*) As to giving evidence of previous convictions, see p. 382, *post*.

(*j*) *R.* v. *Turberfield* (1864), 34 L. J. (M. C.) 20, C. C. R.; *R.* v. *Cole* (1810), Phillipps on Evidence, 10th ed., I., 508.

Evidence that defendant has committed similar offences.

the acts which form the basis of the charge, and even if they form or have formed the basis of other charges. Such evidence is admissible to show not that the defendant did the acts which form the basis of the charge, but that, if he did such acts, he did them intentionally and not accidentally, or inadvertently, or innocently, or that they formed a part of a system (*k*).

(*k*) Such evidence has been admitted on charges of murder (see *R.* v. *Geering* (1849), 18 L. J. (M. C.) 215, where the prisoner was accused of poisoning her husband with arsenic, and to show that the husband was poisoned with arsenic and that the arsenic was intentionally given him, it was proved that of her three sons who lived with the prisoner, and whom she supplied with food, two died and one became ill from arsenical poisoning); see also *R.* v. *Garner* (1864), 4 F. & F. 346; *R.* v. *Cotton* (1873), 12 Cox, C. C. 400; *R.* v. *Heeson* (1878), 14 Cox, C. C. 40; *R.* v. *Flannagan* (1884), 15 Cox, C. C. 403; compare *R.* v. *Mogg* (1830), 4 C. & P. 364; and see *Makin* v. *A.-G. for New South Wales*, [1894] A. C. 57, P. C., where the prisoners (husband and wife) were tried for the murder of an infant child whom they had received from its mother for a small sum on the pretence that they wished to adopt it, and whose body was found buried in the yard of a house where the prisoners had lived; to prove that the child did not die accidentally or from natural causes evidence was given that the prisoners had received other children for small payments and on similar representations, and that the bodies of twelve other infants had been found buried in the yards of houses where the prisoners had lived). Similar evidence may be admitted on a charge of the unlawful use of instruments to procure a miscarriage (*R.* v. *Dale* (1889), 16 Cox, C. C. 703; *R.* v. *Bond*, [1906] 2 K. B. 389, C. C. R.); on a charge of maliciously shooting (*R.* v. *Voke* (1823), Russ. & Ry. 531); on a charge of false pretences or fraud (*R.* v. *Roebuck* (1856), 7 Cox, C. C. 126, C. C. R.; *R.* v. *Francis* (1874), L. R. 2 C. C. R. 128; *R.* v. *Rhodes*, [1899] 1 Q. B. 77, C. C. R.; *R.* v. *Ollis*, [1900] 2 Q. B. 758, C. C. R.; *R.* v. *Wyatt*, [1904] 1 K. B. 188, C. C. R.; *R.* v. *Smith* (1905), 20 Cox, C. C. 804, C. C. R.; the case of *R.* v. *Holt* (1860), 8 Cox, C. C. 411, C. C. R., is not, it seems, now to be regarded as an authority to the contrary: see *R.* v. *Smith*, *supra*); embezzlement (*R.* v. *Richardson* (1860), 2 F. & F. 343; *R.* v. *Stephens* (1888), 16 Cox, C. C. 387, C. C. R.); uttering forged instruments or counterfeit coins (*R.* v. *Whiley* (1804), 2 Leach, 983; *R.* v. *Hough* (1806), Russ. & Ry. 120; *R.* v. *Ball* (1807), Russ. & Ry. 132; *R.* v. *Millard* (1813), Russ. & Ry. 245; *R.* v. *Fuller* (1816), Russ. & Ry. 308; *R.* v. *Foster* (1855), 24 L. J. (M. C.) 134, C. C. R.; *R.* v. *Smith* (1831), 4 C. & P. 411; *R.* v. *Phillips* (1829), 1 Lew. C. C. 105; *R.* v. *Forbes* (1835), 7 C. & P. 224; *R.* v. *Cooke* (1838), 8 C. & P. 586; *R.* v. *Brown* (1861), 2 F. & F. 559; *R.* v. *Weeks* (1861), 30 L. J. (M. C.) 141, C. C. R.; *R.* v. *Salt* (1862), 3 F. & F. 834; *R.* v. *Colclough* (1882), 15 Cox, C. C. 92, C. C. R.); arson (*R.* v. *Dossett* (1846), 2 Car. &. Kir. 306; *R.* v. *Gray* (1866), 4 F. & F. 1102, but see *R.* v. *Harris* (1864), 4 F. & F. 342); conspiracy to excite discontent and disaffection (*R.* v. *Hunt* (1820), 3 B. & Ald. 566); accusing a person of a crime with intent to extort money (*R.* v. *Egerton* (1818), Russ. & Ry. 576; *R.* v. *Cooper* (1849), 3 Cox, C. C. 547). In a case of larceny or robbery evidence of similar larcenies or robberies is not admissible to prove the *animus furandi* (*R.* v. *Butler* (1846), 2 Car. & Kir. 221), except, perhaps, where such evidence would tend to disprove a defence of accident or mistake or *bona fides* (*R.* v. *Winkworth* (1830), 4 C. & P. 444); and in cases of larceny by a trick evidence of similar larcenies would be admissible to prove system or dishonest intention. In cases of receiving stolen goods with guilty knowledge that they were stolen evidence of the receipt of other stolen property, if part of the same transaction, was admissible at common law (*R.* v. *Dunn* (1826), 1 Mood. C. C. 146; *R.* v. *Nicholls* (1858), 1 F. & F. 51; but see *R.* v. *Oddy* (1851), 2 Den. 264). Now by statute (Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 19), on a charge of receiving stolen goods, evidence that other property stolen within the preceding twelve months was found in the possession of the accused, or that the accused has within five years preceding the charge been convicted of any offence involving fraud or dishonesty, is admissible to prove guilty knowledge (see *R.* v. *Girod* (1906), 70 J. P. 514, C. C. R., and p. 683, *post*). As to uttering counterfeit coins see Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 10; see p. 514, *post*.

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Evidence of character of defendant.

743. Evidence of the general reputation of the defendant for good character is relevant to the case for the defence, if such evidence is applicable to the particular nature of the charge (*l*). The defendant is allowed to give such evidence for the purpose of showing that it was unlikely that he should have committed the offence charged (*m*).

If the defendant gives such evidence (*n*), he makes his character a matter relevant to the issue, and if he calls witnesses to character, they may be cross-examined by the prosecution both as to his general bad character and as to particular charges against him (*o*).

Previous conviction of defendant.

In most cases if evidence of good character has been given and the defendant has been previously convicted, evidence of such previous conviction may be given (*p*).

If the prisoner himself gives evidence, he can only be cross-examined as to his bad character or as to a previous conviction or charge against him, where the proof that he has been committed or been convicted of another charge is evidence against him to show that he is guilty of the offence with which he is charged (*q*), or where he has sought to establish his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution, or he has given evidence against any other person charged with the same offence (*r*).

(*l*) *R.* v. *Rowton* (1865), 10 Cox, C. C. 25. Evidence of disposition is not admissible (*ibid.*).

(*m*) *R.* v. *Rowton*, *supra*, *per* WILLES, J., at p. 38; *R.* v. *Frost* (1840), Gurney's Rep., *per* TINDAL, C.J., at p. 749. Evidence of character is only of weight where the other evidence is in even balance, or where there is fair and reasonable doubt of the prisoner's guilt (*R.* v. *Davison* (1808), 31 State Tr. 99, *per* Lord ELLENBOROUGH, C.J., at p. 217; *R.* v. *Haigh* (1813), 31 State Tr. 1092, *per* LE BLANC, J., at p. 1122; *R.* v. *Turner* (1664), 6 State Tr. 565, *per* HYDE, C.J., at p. 613; *R.* v. *Swendsen* (1702), 14 State Tr. 559, *per* HOLT, C.J., at p. 596; *R.* v. *Dammaree* (1710), 15 State Tr. 521, *per* PARKER, C.J., at p. 604; and see *R.* v. *Draper* (1807), 30 State Tr. 959, *per* Lord ELLENBOROUGH, C.J., at p. 1018.

(*n*) This can be done by cross-examining witnesses for the prosecution as to the defendant's good character as well as by calling witnesses as to such character (*R.* v. *Gadbury* (1838), 8 C. & P. 676; *R.* v. *Shrimpton* (1851), 2 Den. 319).

(*o*) See *R.* v. *Rowton*, *supra*, C. C. R.; *R.* v. *Hodgkiss* (1836), 7 C. & P. 298. It is not usual to cross-examine witnesses to character or to give rebutting evidence of bad character, unless there is some definite charge against the defendant (*R.* v. *Hodgkiss*, *supra*; but see *R.* v. *Rowton*, *supra*). As to the proof of bad character by evidence of circumstances of suspicion, see *R.* v. *Rogan* (1846), 1 Cox, C. C. 291, and *R.* v. *Wood* (1841), 5 Jur. 225.

(*p*) See Previous Conviction Act, 1836 (6 & 7 Will. 4, c. 111), s. 1. If a person tried for any felony gives evidence of good character, a previous conviction of felony against the prisoner may be proved (Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (f)). If a person tried for any offence punishable under the Larceny Act, 1861 (24 & 25 Vict. c. 96), gives evidence of good character, evidence may be given of a previous conviction charged in the indictment (*ibid.*, s. 116). There are similar provisions in the Coinage Offences Act, 1861 (24 & 25 Vict. c. 99) (*ibid.*, s. 37).

(*q*) See p. 380, *ante*.

(*r*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (f); see p. 404, *post*.

744. In a prosecution for receiving stolen goods it is expressly provided (*s*) that evidence of a previous conviction of the accused may be admitted in order to prove guilty knowledge. Receiving.

In a prosecution of a suspected person or reputed thief under s. 4 of the Vagrancy Act, 1824 (*a*), for frequenting certain public places with intent to commit felony, it is expressly provided (*b*) that general evidence of bad character may be given by the prosecution to prove the intent. Vagrant.

745. In certain cases the commission of one offence after conviction for another offence is an aggravation of the second offence and exposes the offender to a severer punishment, and in most of such cases the previous conviction is alleged in a separate count of the indictment, but the jury are not informed of, and no evidence is given on, this separate count until after a verdict of guilty has been given on some other part of the indictment (*c*). Aggravation.

In the case of certain statutory offences (*d*) the previous conviction is a substantive part of the charge, and in such a case the previous conviction is communicated and proved to the jury in the same way as the rest of the case for the prosecution (*e*).

On the trial of an indictment for non-repair or obstruction of a highway or similar nuisance evidence may be given of a previous conviction against the same defendant in respect of the same highway, and such evidence is generally conclusive as to the road being a highway and the liability of the defendant to repair (*f*).

746. The character of the prosecutor is not in general a matter relevant to the issue, unless he is also a witness and his credibility is impeached. But it seems it is open to the defence to show, if there is any doubt as to the truth of the charge, that the prosecutor in instituting the prosecution has been influenced by unworthy motives (*g*). Evidence of character of prosecutor.

In charges of rape the prosecutrix may be cross-examined to

(*s*) Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 19; see note (*k*) on p. 381, *ante*.

(*a*) 5 Geo. 4, c. 83.

(*b*) Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 15. The offence referred to is punishable on summary conviction.

(*c*) See Previous Conviction Act, 1836 (6 & 7 Will. 4, c. 111), s. 1; Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 116; Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 37; Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 9; *Faulkner* v. *R.*, [1905] 2 K. B. 76; *R.* v. *Blaby*, [1894] 2 Q. B. 170, C. C. R.; *R.* v. *Martin* (1869), L. R. 1 C. C. R. 214.

(*d*) Namely, in charges under the Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 10; and under the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 7.

(*e*) *R. v. Penfold*, [1902] 1 K. B. 547, C. C. R.

(*f*) See *R.* v. *Haughton* (*Inhabitants*) (1853), 1 E. & B. 501; *R.* v. *Maybury* (1864), 4 F. & F. 90; *R.* v. *St. Pancras* (1794), Peake, N. P. 220; and see *R.* v. *Stoughton* (1670), 2 Wms. Saund., 1871 ed., at p. 481. *Aliter* of an indictment for a nuisance in carrying on an offensive trade (*R.* v. *Fairie* (1857), 8 E. & B. 486). Indictments for non-repair of highways, though criminal in form, are civil in reality, and for this reason the principles of estoppel, which have generally no application to criminal cases, are applied to the trial of such indictments; see title HIGHWAYS.

(*g*) See *R.* v. *Coyle* (1851), *R.* v. *Roberts* (1886), Wills on Circumstantial Evidence, 5th ed., 211.

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show that she is of general bad character or a common prostitute, or has had immoral intercourse with the accused or with other men, and evidence may be given by witnesses to prove such imputations except as to intercourse with men other than the accused, as regards which the defendant is bound by her answer (*h*).

SUB-SECT. 4.—*Credibility of Witnesses.*

Credibility of witnesses.

747. The credibility of any witness who gives evidence as to the facts either for the prosecution or the defence is material to the issue (*i*).

Any witness called as to the facts may be cross-examined by the other side as to credit for the sake of impugning his character, credibility, impartiality, memory, accuracy, intelligence, or means of knowledge (*k*).

General evidence may be given on behalf of either side to show that any witness as to the facts (other than the defendant) called by the opposite side has such a character or reputation that he is unworthy of being believed (*l*).

A witness other than the defendant may be cross-examined as to particular facts proving his bad character (*m*), and any witness may be cross-examined as to other facts impeaching his credibility.

A witness other than a defendant may be asked on cross-examination whether he has committed a crime, but the witness may object to answer such a question on the ground that it may incriminate him (*n*). If he answers the question and denies the imputation, he can only be contradicted, if he has been previously convicted, in which case evidence may be given to prove the conviction (*o*).

Partiality.

748. A witness may be cross-examined as to his impartiality or his connection with the person for whom he gives evidence, and if

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(*h*) *R.* v. *Barker* (1829), 3 C. & P. 589; *R.* v. *Martin* (1834), 6 C. & P. 562; *R.* v. *Cockcroft* (1870), 11 Cox, C. C. 410; *R.* v. *Hodgson* (1811), Russ. & Ry. 211. The same rule applies to assault with intent to ravish and indecent assault (*R.* v. *Clarke* (1817), 2 Stark. 241; *R.* v. *Holmes* (1871), L. R. 1 C. C. R. 334; *R.* v. *Riley* (1887), 18 Q. B. D. 481, C. C. R.).

(*i*) *R.* v. *Baker*, [1895] 1 Q. B. 797, C. C. R.

(*k*) But a defendant who gives evidence under the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), may not, except in certain events (see p. 404, *post*), be cross-examined as to his character; see s. 1 (f).

(*l*) *R.* v. Brown (1867), L. R. 1 C. C. R. 70; *R.* v. *Bispham* (1830), 4 C. & P. 392. See as to the form of the question *R.* v. *de la Motte* (1781), 21 State Tr. 687, 811, *per* BULLER, J.; *R.* v. *Watson* (1817), 2 Stark. 116, *per* ABBOTT, J., at p. 154; *Mawson* v. *Hartsink* (1802), 4 Esp. 102, where Lord ELLENBOROUGH, C.J., approved of the question put in this way, "Have you the means of knowing what the general character of this witness was, and from such knowledge of his general character would you believe him on his oath?"

(*m*) See *R.* v. *Castro* (1873), Shorthand Notes, Vol. II., 1002, where a witness who had given evidence as to making tattoo marks on Sir R. C. Tichborne was cross-examined as to an act of adultery with the wife of one of his friends. As to cross-examination of the prosecutrix on charges of rape, see p. 383, *ante*.

(*n*) *R.* v. *Watson* (1817), 2 Stark. 116, *per* BAYLEY, J., at p. 153.

(*o*) Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s. 6.

he denies the imputation of partiality, evidence may be given to prove that he is not impartial or that he is so closely connected with the person for whom he gives evidence that he is not likely to be impartial (*p*).

Subject to these exceptions, a witness who denies facts put to him in cross-examination cannot be contradicted as to such facts, unless they are relevant to the issue (*q*).

(*p*) See *R.* v. *Yewin* cited in *Harris* v. *Tippett* (1811), 2 Camp. 638. In this case on a charge of larceny the prisoner's counsel was allowed to ask the principal witness for the prosecution whether he had not been charged with robbing his master and whether he had not afterwards said he would be revenged and "would soon fix him in Monmouth gaol"; on his denying both suggestions LAWRENCE, J., refused to allow the defence to prove that the witness had been charged, but allowed proof of the words alleged to be used, as such words were material to the guilt or innocence of the prisoner. So in *R.* v. *Shaw* (1888), 16 Cox, C. C. 503, a witness for the prosecution having denied on cross-examination that he had had a quarrel with the prisoner, CAVE, J., allowed evidence in contradiction to be given to prove the quarrel and that the witness had threatened harm to the prisoner. In *R.* v. *Whelan* (1881), 14 Cox, C. C. 595, on a charge of murder a witness who identified the prisoner as the murderer was cross-examined as to an alleged statement that he had made on a former occasion to the effect that the prisoner was not the murderer. In *Stafford's* (*Lord*) *Case* (1680), 7 State Tr. 1293, 1400, evidence was given on behalf of the accused that one of the witnesses for the Crown had bribed witnesses to swear against the accused; and see *Langhorn's Case* (1679), 7 State Tr. 417, 446, and *Caroline's Case* (1820), 2 Brod. & Bing. 284, 302, 311, H. L. The fact that a witness has accepted a bribe to give evidence or that he has given another person a bribe to induce him to give evidence is material to the issue as going to the impartiality of the witness and may be proved (*A.-G.* v. *Hitchcock* (1847), 1 Exch. 91, at p. 101). A witness may be cross-examined as to a previous statement made by him relative to the subject-matter of the indictment and inconsistent with the evidence he has given, and if he does not distinctly admit that he made such statement, proof may be given that he did in fact make it, but before such proof can be given, the circumstances of the statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement (Evidence Act, 1865 (28 & 29 Vict. c. 18), s. 4). A witness may be cross-examined as to previous statements made by him in writing or reduced into writing relative to the subject-matter of the indictment without the writing being shown to him, but he cannot be contradicted by proof of such writing, unless his attention is first called to those parts of the writing which are to be used to contradict him (*ibid.*, s. 5). This is frequently done in the case of depositions of the witness before the examining justices (*R.* v. *Riley* (1866), 4 F. & F. 964; *R.* v. *Wright* (1866), 4 F. & F. 967; *R.* v. *Hughes* (1868), Roscoe, Criminal Evidence, 13th ed., 118). If a witness denies that he made such a statement, evidence can only be given to contradict him, when the statement is relevant to the issue. Thus, where a witness for the Crown was asked in cross-examination if he had not previously said that the officers of the Crown had offered him a bribe and he denied having said so, it was held that evidence could not be given to prove that he did say so, as the question whether such a statement had been made was not relevant to the issue (*A.-G.* v. *Hitchcock* (1847), 1 Exch. 94). A witness may be cross-examined to show that he stands in such a close relation to the defendant that he is not indifferent or impartial, and if he denies the suggestion evidence may be given to prove such relation (*Thomas* v. *David* (1836), 7 C. & P. 350).

(*q*) See *A.-G.* v. *Hitchcock*, *supra*, *per* POLLOCK, C.B., at p. 99: "If the answer of a witness is a matter which you would be allowed on your part to prove in evidence—if it has such a connection with the issue that you would be allowed to give it in evidence—then it is a matter on which you may contradict him." Thus, if a witness is asked whether he has not and denies that he has

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749. If the character of a witness has been impeached either by cross-examination or by direct evidence called for the purpose of impeaching it, the side that calls the witness may give evidence to show that his character is such that he is worthy of credit (*r*).

SECT. 2.—*Method of Proof.*

SUB-SECT. 1.—*In General.*

Manner of proving facts the same generally in criminal and civil cases.

750. As regards the manner in which facts relevant to the issue must or may be proved there is in general no difference between civil and criminal cases (*s*), but there are some particular points of difference arising out of the special nature of criminal proceedings. Thus, in criminal proceedings no admissions preliminary to the trial can ordinarily be made by the defendant or his advisers so as to dispense with oral evidence and strict proof of facts necessary to be proved (*t*).

The plea of guilty at the trial is a formal and conclusive admission of the offence charged in the indictment, and dispenses with the necessity of proving the facts alleged therein.

Admissions.

When the plea is not guilty, in cases of misdemeanour the defendant or his counsel may at the trial make other admissions of facts; but in cases of felony no such admissions can be made. Therefore, if the defendant pleads not guilty on a charge of felony, oral evidence is indispensable, whereas if he pleads not guilty on a charge of misdemeanour, such evidence may by agreement be dispensed with in certain cases (*a*).

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made a statement on a question affecting the guilt or innocence of the prisoner inconsistent with the evidence which the witness is giving, such a statement may be proved by the other side (*R.* v. *Whelan* (1881), 14 Cox, C. C. 595). As to cross-examination of a party's own witness by the party who calls him, see p. 364, *ante*. As to rape, see p. 383, *ante*.

(*r*) *R.* v. *Murphy* (1753), 19 State Tr. 693, at p. 724; see *R.* v. *Whelan* (1881), 14 Cox, C. C. 595.

(*s*) *A.-G.* v. *Le Merchant* (1772), cited 2 Term Rep. 201, n., 202; *R.* v. *Watson* (1817), 2 Stark. 116, at p. 155; *R.* v. *Burdett* (1820), 4 B. & Ald. 95, *per* BEST, J., at p. 122; *R.* v. *Murphy* (1837), 8 C. & P. 297, 306; *R.* v. *Francis* (1874), L. R. 2 C. C. R. 128, at p. 133. As most crimes are committed in secret, and as the question of intention and guilty mind plays a much more prominent part in criminal than in civil proceedings, direct evidence of the guilt of an accused person is often impossible, and a great deal of the evidence in criminal trials is of the kind which is called indirect or circumstantial or presumptive (*R.* v. *Burdett* (1820), 4 B. & Ald. 95, *per* BEST, J., at p. 122), and see Report of the Committee of the House of Commons appointed to inspect the Journals of the House of Lords on the Trial of Warren Hastings, Works of Edmund Burke (ed. 1826, Rivington), Vol. XIV., 399.

(*t*) See *R.* v. *Thornhill* (1838), 8 C. & P. 575, where, in a prosecution for a misdemeanour (perjury), the legal advisers on both sides had agreed before the trial that formal proofs should be dispensed with and that part of the case for the prosecution should be admitted, but Lord ABINGER, C.B., said: "In a criminal case tried on the Crown side of the assizes I cannot allow any admission to be made on the part of the defendant, unless it is made at the trial by the defendant or his counsel." It appears from this that, if a criminal case is removed by *certiorari* and is tried in the King's Bench Division, or on the civil side at the assizes, preliminary admissions can be made; but this only applies generally to misdemeanours, as it is not the practice to remove indictments for felony by *certiorari* (see title CROWN PRACTICE).

(*a*) Phillipps on Evidence, 10th ed., Vol. I., 391; *R.* v. *Foster* (1836),

751. In criminal cases, with certain exceptions (*b*), evidence on commission cannot be taken or used.

752. In criminal cases neither party can obtain evidence from the opposite side by means of interrogatories or discovery of documents (*c*).

A defendant in a criminal proceeding cannot be compelled to produce evidence against himself (*d*); consequently no order can be made on him to produce documents or other things (*e*). But an order may be made in a criminal case under the Bankers' Books Evidence Act, 1879 (*f*), for the inspection and taking copies of

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7 C. & P. 495. In cases of misdemeanours admissions can be made (*R.* v. *Foster*, *supra*, *per* PATTESON, J.; *R.* v. *Morphew* (1814), 2 M. & S. 602). A defendant charged with a crime may make statements before his trial which amount to confessions and admissions of his guilt, and such statements are evidence against him and may be proved against him at his trial, if he pleads not guilty, but such statements may be repudiated or explained by him at his trial and are not conclusively binding on him (see p. 394, *post*).

(*b*) In prosecutions for misdemeanours depositions of a witness who is about to leave the country can, it seems, be taken with the defendant's consent (*R.* v. *Morphew* (1814), 2 M. & S. 602, where Lord ELLENBOROUGH, C.J., said there was a precedent for such a proceeding in the impeachment against Warren Hastings). Under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 691, if a criminal proceeding is instituted here and it is proved that a witness whose deposition has been taken on oath out of the United Kingdom in the presence of the accused before any justice in the King's dominions, or any British consular officer elsewhere, cannot be found in the United Kingdom, the deposition can be used in evidence (see *R.* v. *Conning* (1868), 11 Cox, C. C. 134; *R.* v. *Anderson* (1868), 11 Cox, C. C. 154; *R.* v. *Stewart* (1876), 13 Cox, C. C. 296). In cases of indictments or informations in the King's Bench Division for misdemeanours or offences committed in India, and for misdemeanours committed against the Acts passed for the suppression of the slave trade in any places out of the United Kingdom and within any British colony, settlement, plantation or territory, the King's Bench Division may award a mandamus to the judges of the courts of the places where the alleged offences were committed to hold a court for the examination of witnesses, and examinations taken under such a mandamus are admissible in evidence on a trial here for the specified offences (East India Company Act, 1772 (13 Geo. 3, c. 63), s. 40; Slave Trade Act, 1843 (6 & 7 Vict. c. 98), s. 4). There are similar provisions as to prosecutions for offences committed abroad by persons employed in the public service (Criminal Jurisdiction Act, 1802 (42 Geo. 3, c. 85), s. 2). For an instance of evidence taken abroad under the latter Act, see *R.* v. *Picton* (1805), 30 State Tr. 225. As to the depositions of a witness examined before the justices who is dead or unable to travel, or kept out of the way by the accused, and as to the depositions taken before a coroner, and as to depositions privately taken of a witness who is ill and not expected to recover, see p. 365, *ante*.

(*c*) The practice as to interrogatories and inspection of documents is governed by the Rules of the Supreme Court, which have no application to criminal cases (Ord. 68, r. 1; see Judicature Act, 1875 (38 & 39 Vict. c. 77), s. 19).

(*d*) *A.-G.* v. *Le Merchant* (1772), cited 2 Term Rep. 201, n.; *R.* v. *Parnell* (*al. Purnell*) (1748), cited 2 Term Rep. 202, n.; *R.* v. *Cornelius* (1743), 2 Stra. 1210; *R.* v. *Heydon* (1762), 1 Wm. Bl. 351.

(*e*) *Ibid.* It has been decided in one case that an order cannot be made, at the instance of the defendant, on the prosecutor for the inspection of documents (*R.* v. *Holland* (1792), 4 Term Rep. 691). But an order was made at the instance of the defendant in *R.* v. *Colucci* (1861), 3 F. & F. 103, for inspection of letters which had been seized under a search warrant and were in the possession of the prosecution. A defendant is entitled to copies of the depositions taken by the examining justices (see p. 322, *ante*).

(*f*) 42 & 43 Vict. c. 11, ss. 7, 10; see title BANKERS AND BANKING, Vol. I., p. 644.

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entries in the books of a bank at which a defendant keeps an account (*g*).

Evidence of defendant and wife or husband of defendant.

753. Except in certain cases (*h*), neither the defendant nor the wife or husband of a defendant in a criminal matter can be called as a witness for the prosecution or can be called without the defendant's consent as a witness for any defendant (*i*).

A defendant in a criminal matter cannot, except when a *nolle prosequi* has been entered or a verdict of not guilty been returned in respect of him, be served with a *subpœna ad testificandum* or a *subpœna duces tecum* (*k*).

Confessions.

754. The inadmissibility of confessions and admissions of guilt by a prisoner in certain events hereinafter referred to is peculiar to criminal law (*l*).

Dying declarations.

Complaint in cases of rape etc.

The admissibility of dying declarations and the admissibility in cases of rape and similar offences of the details of a complaint by the prosecutrix are peculiar to criminal law, and afford an exception to the ordinary rules of evidence relating to hearsay (*m*).

Corroboration.

755. There is not any general rule requiring that more than one witness should be called to establish a *primâ facie* case; but corroboration of the evidence of a witness who deposes as to the material facts alleged by the prosecution is desirable and in some cases is necessary (*n*). The evidence of an accomplice is not sufficient, unless corroborated in some material particular (*o*).

Unstamped document.

756. A document which the law requires to be stamped, but which is unstamped, is admissible in evidence in criminal proceedings (*p*).

Presumptions.

757. There are some presumptions which are peculiar to criminal proceedings and others which, though common to civil and criminal proceedings, are much more commonly applied in criminal than in civil procedure (*q*).

(*g*) *R.* v. *Kinghorn*, [1908] 2 K. B. 949. The order may be made by any criminal court before whom the prosecution is being conducted (*ibid.*).

(*h*) See pp. 402, 405, *post*.

(*i*) *Ibid.*

(*k*) *Ibid.*, and *A.-G.* v. *Le Merchant* (1772), cited 2 Term Rep. 201, n. If a defendant is in possession of a document or thing the production of which is necessary for the proof of the case of the prosecution, he can be served with a notice to produce the document or thing, but he is not obliged to produce it; if he does not produce it after being served with a notice to produce, secondary evidence may be given of the contents of any such document or of any inscription etc. on any such thing (see p. 390, *post*).

(*l*) See p. 394, *post*.

(*m*) See pp. 393, 394, *post*.

(*n*) Two witnesses are necessary in the case of treason and of perjury and where the evidence of a child is given not on oath or affirmation. The evidence of an accomplice given for the prosecution should be corroborated. The evidence of the complainant in charges of rape and similar offences is of little weight, if not corroborated; and see pp. 408, 456, 471, 494, 503, 543, 615, *post*.

(*o*) *R.* v. *Warren* (1909), 25 T. L. R. 633; *Re Meunier*, [1894] 2 Q. B. 415; *R.* v. *Tate*, [1908] 2 K. B. 680; and see *R.* v. *M.* (1908), 72 J. P. 214; *R.* v. *Kirkham* (1909), 25 T. L. R. 656; *R.* v. *Mullins* (1848), 3 Cox, C. C. 526, followed in *R.* v. *Bickley* (1909), 73 J. P. 239; *R.* v. *Everest* (1909), 73 J. P. 269.

(*p*) Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 14 (4).

(*q*) "A presumption of any fact is an inferring of that fact from other facts that are known" (*per* ABBOTT, C.J., *R.* v. *Burdett* (1820), 4 B. & Ald. 95, at p. 161). Presumptions are sometimes divided into conclusive and irrebuttable presumptions of law (*presumptiones juris et de jure*), rebuttable presumptions of law

758. Apart from the points of difference to which reference has been made, the general rules of the law of evidence as to proof of facts (including facts of which the courts take judicial notice) and of documents are the same in criminal as in civil proceedings (*r*).

Instances of application of general rule of evidence to criminal proceedings.

(*presumptiones juris*), *i.e.*, inferences recognised by law, which "stand instead of proofs till the contrary be proved" (Gilbert, Law of Evidence, 6th ed., 142), and presumptions of fact or mere ordinary inferences of fact; but the so-called presumptions of fact are only ordinary inferences not specially recognised by law. There are two irrebuttable presumptions of law which are peculiar to criminal procedure, namely, that a child under the age of seven is incapable of committing a crime and that a boy under the age of fourteen is incapable of committing the crime of rape (see p. 240, *ante*); these presumptions are conclusive in favour of the defendant. There are no irrebuttable presumptions of law in criminal cases which are conclusive against a defendant, except possibly in prosecutions for the non-repair etc. of highways (see p. 383, *ante*). A rebuttable presumption of law is one that establishes a *primâ facie* case, and which, if not rebutted, should lead to a verdict in favour of the side which establishes the presumption. Instances of such a presumption peculiar to criminal cases are the presumption that a person found in possession of stolen goods soon after the theft is guilty of larceny, or of receiving stolen goods with guilty knowledge; that an infant between the age of seven and fourteen years is *doli incapax* (see p. 239, *ante*); the presumption of intention, *i.e.*, that every man is to be deemed to have intended the natural and probable consequences of his acts (*R.* v. *Dixon* (1814), 3 M. & S. 11, at p. 15; *R.* v. *Harvey* (1823), 2 B. & C. 257, at p. 264; *R.* v. *Meade*, [1909] 1 K. B. 895, C. C. A.; and see p. 236, *ante*), is a presumption which, though not peculiar to criminal law, is more generally applicable to criminal than to civil cases; so is the presumption of the innocence of a person accused of a crime (*R.* v. *White* (1865), 4 F. & F. 383). The presumption of marriage from cohabitation is common to civil and criminal cases, but is not applicable on a charge of bigamy (see pp. 393, note (*i*), 534, *post*). The presumption *omnia rite esse acta*, *i.e.*, that a man who has acted in a public capacity was duly appointed and has properly discharged his official duties, is common to criminal and civil proceedings (for its application to criminal proceedings see *R.* v. *Gordon* (1789), 1 Leach, 515; *R.* v. *Rees* (1834), 6 C. & P. 606; *R.* v. *Jones* (1809), 2 Camp. 131; *R.* v. *Gardner* (1810), 2 Camp. 513; *R.* v. *Verelst* (1813), 3 Camp. 432; *R.* v. *Howard* (1832), 1 Mood. & R. 187; *R.* v. *Borrett* (1833), 6 C. & P. 124; *R.* v. *Murphy* (1837), 8 C. & P. 297; *R.* v. *Newton* (1844), 1 Car. & Kir. 469; *R.* v. *Townsend* (1841), Car. & M. 178; *R.* v. *Manwaring* (1856), Dears. & B. 131, at p. 142; *R.* v. *Cresswell* (1876), 1 Q. B. D. 446, C. C. R.; *R.* v. *Stewart* (1876), 13 Cox, C. C. 296, at p. 297; *R.* v. *Roberts* (1878), 14 Cox, C. C. 101, C. C. R.; *R.* v. *Garvey* (1887), 16 Cox, C. C. 252, C. C. R.; but see *R.* v. *Essex* (1857), Dears. & B. 369). There are some statutory presumptions which are peculiar to criminal cases, *e.g.*, the presumption of innocence on a charge of bigamy from the fact that the husband or wife of the accused has been continually absent for seven years before the second marriage and was not known by the accused to be living within such time (Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 57). There are statutory presumptions of guilt from the making or possessing etc. of coining tools (Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 24); from the possession of forged instruments (Forgery Act, 1861 (24 & 25 Vict. c. 98), ss. 13, 45); from the possession of public stores (Public Stores Act, 1875 (38 & 39 Vict. c. 25), s. 7); from acting or behaving as the master or mistress of a disorderly house (Sunday Observance Act, 1780 (21 Geo. 3, c. 49), s. 2); from the finding of instruments of gaming in any place suspected to be used as a common gaming house (Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 8); from being found by night in possession without lawful excuse of any instrument of housebreaking (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 58); and see Taylor on Evidence, 10th ed., Vol. I., 289.

(*r*) See title EVIDENCE. As to proof of handwriting, see Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s. 8, and *R.* v. *Silverlock*, [1894] 2 Q. B. 766, C. C. R.

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Rule as to "best evidence."

Thus, the rule requiring that the best evidence of which a fact is capable should be given to prove it applies to criminal cases, and makes it necessary that the contents of a written document should be proved by the production of the document alone (*s*), except when the written document is lost or destroyed or is in the possession of the adverse party, who does not produce it after being served with a proper notice to produce, or is in the possession of a person who is privileged to withhold it and who insists on his privilege, or where the production of the document would be physically impossible or highly inconvenient, or where the document is of a public nature and some other mode of proof has been specially substituted (*t*).

The rule as to the "best evidence" is confined to written documents or things on which something is written or printed or engraved. The rule does not apply to other chattels the production of which in court is not essential, and evidence can be given of the condition etc. of such chattels without their production (*u*).

Notice to produce document in possession of defendant.

759. If a document of which the prosecution wishes to give evidence is in the possession of the defendant, or of a solicitor, agent, or servant of the defendant, the prosecution must serve on

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(*s*) Gilbert on Evidence, 6th ed., 3; *Queen's Case* (1820), 2 Brod. & Bing. 284, H. L.

(*t*) See Roscoe's Criminal Evidence, 13th ed., 2; *R.* v. *Doran* (1791), 1 Esp. 127; *R.* v. *Kitson* (1853), Dears. C. C. 187 (insurance must be proved by production of policy); *R.* v. *Hube* (1792), Peake, 180 (matter of record cannot be proved by parol evidence); *R.* v. *Rowland* (1858), 1 F. & F. 72 (proceedings in county court other than evidence must be proved by official documents); *R.* v. *Dillon* (1877), 14 Cox, C. C. 4 (in proceedings before justices information, if in writing and in existence, must be produced); and *R.* v. *Regan* (1887), 16 Cox, C. C. 203 (to prove that the defendant sent a telegram original of message must be produced, or its destruction proved). The mere circumstance that a written account of the fact to be proved exists does not exclude parol evidence of the fact (*R.* v. *Layer* (1722), 16 State Tr. 94, at p. 214). Thus, to prove perjury in county court proceedings the judge's notes need not be produced, but the evidence given can be proved by parol (*R.* v. *Morgan* (1852), 6 Cox, C. C. 107); printed matter can be given in evidence without producing the manuscript (*R.* v. *Watson* (1817), 2 Stark. 116, 129); evidence can be given of the resolutions proposed at a meeting without producing the paper from which the resolutions were read (*R.* v. *Sheridan* (1811), 31 State Tr. 543, 671; *R.* v. *Hunt* (1820), 3 B. & Ald. 566; *R.* v. *Moors* (1801), 6 East, 419, n.). If persons who act in a public capacity have been appointed by a document in writing, in order to prove their appointment it is not necessary to produce the document, but evidence may be given that the persons have acted in the alleged capacity (*R.* v. *Gordon* (1789), 1 Leach, 515, and cases cited on p. 389, *ante*). As to admissions of a party relating to a written document which is not produced, see *Slatterie* v. *Pooley* (1840), 6 M. & W. 664, the rule in which is applicable to criminal cases, but there seems to be no reported case of its being applied to such cases (Roscoe's Criminal Evidence, 7).

(*u*) *R.* v. *Francis* (1874), L. R. 2 C. C. R. 128. The cases of *R.* v. *Robinson* (1865), Le. & Ca. 604, and *R.* v. *Farr* (1864), 4 F. & F. 336, can hardly be regarded as authorities to the contrary. In *R.* v. *Hunt* (1820), 3 B. & Ald. 566, 575, parol evidence was given of the inscriptions on banners. The fact that a document is in a particular person's handwriting may be proved in a criminal case in any of the different ways in which it may be proved in a civil case; no one of such ways is in law better than another (see Taylor on Evidence, 10th ed., Vol. II., p. 1336). So absence of consent of the owner of property to an act can in some cases be proved by other evidence than that of the person whose consent is necessary (*R.* v. *Hazy* (1826), 2 C. & P. 458; *R.* v. *Allen* (1826), 1 Mood. C. C. 154).

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the defendant a notice to produce the document at the trial, and if the defendant does not produce it at the trial and proof is given tracing the document to the possession of the defendant or his solicitor etc., and showing that the notice to produce was duly served, the prosecution may give secondary evidence of the document (*v*).

Document in possession of prosecutor. *Subpœna duces tecum.*

If the defendant wishes to give evidence as to the contents of a document which is in the possession of the prosecutor, he must serve the prosecutor with a *subpœna duces tecum*. The prosecutor is not a party, for criminal proceedings are at the suit of the Crown, and a notice to produce served on the prosecutor does not enable the defendant to give secondary evidence, if the original is not produced (*x*).

Secondary evidence.

If a defendant has been served with a notice to produce a document and he does not produce it, and the prosecution gives secondary evidence of the document, the defendant cannot afterwards give the document in evidence (*a*).

(*v*) *A.-G.* v. *Le Merchant* (1772), cited 2 Term Rep. 201, n.; *R.* v. *Ellicombe* (1833), 5 C. & P. 522; *R.* v. *Kitson* (1853), Dears. C. C. 187; *R.* v. *Gordon* (1784), 1 Leach, 300, n.; *R.* v. *Hunter* (1829), 4 C. & P. 128; *R.* v. *Elworthy* (1867), L. R. 1 C. C. R. 103. If it is proved that a defendant read in the hearing of a witness a letter or other document or part of it, evidence can be given by the witness of what he heard without giving the defendant notice to produce (*R.* v. *Layer* (1722), 16 State Tr. 94, at p. 170; *R.* v. *Moors* (1801), 6 East, 419, n.). If copies of letters are found in the possession of the defendant and are seized, such copies may be given in evidence against him, and it is not necessary to produce the originals (*R.* v. *Francia* (1717), 15 State Tr. 897, 941). A notice to produce a document known to have been destroyed is unnecessary, and secondary evidence can be given on proof of the destruction (*R.* v. *Spragge*, cited *How* v. *Hall* (1811), 14 East, 276; *R.* v. *Haworth* (1830), 4 C. & P. 254). Notice is not necessary to produce a duplicate original (*Philipson* v. *Chase* (1809), 2 Camp. 110; *Colling* v. *Treweek* (1827), 6 B. & C. 394; *R.* v. *Watson* (1817), 2 Stark. 116, 129) or a counterpart (see *Burleigh* v. *Stibbs* (1793), 5 Term Rep. 465; *Roe* d. *West* v. *Davis* (1806), 7 East, 363), or a notice (see *Colling* v. *Treweek* (1827), 6 B. & C. 394, at p. 398; *Jory* v. *Orchard* (1799), 2 Bos. & P. 39; *Kine* v. *Beaumont* (1822), 3 Brod. & Bing. 288). It is not necessary to serve a notice to produce a document when, from the nature of the case, the defendant knows that he is charged with its possession, *e.g.*, when the defendant is charged with stealing the document (*R.* v. *Aickles* (1784), 1 Leach, 294; compare *Colling* v. *Treweek*, *supra*, *per* BAYLEY, J., at p. 398, and *Leeds* v. *Cook* (1803), 4 Esp. 256); if a defendant is charged with forging a document, and the document is in his possession, a notice to produce is necessary (*R.* v. *Haworth* (1830), 4 C. & P. 254; *R.* v. *Fitzsimons* (1869), 4 I. R. C. L. 1). In an indictment against a solicitor for perjury in swearing that there was no draft of a certain document notice to produce the draft is necessary (*R.* v. *Elworthy* (1867), L. R. 1 C. C. R. 103). If a document is last seen in the possession of a defendant, it lies on him to trace the document out of his possession (*R.* v. *Thistlewood* (1820), 33 State Tr. 682, *per* ABBOTT, C.J., at p. 758). A notice to produce need not be in writing, but generally is, and in criminal cases, if the defendant is in custody and has no solicitor, it must be in writing. It may be served on the defendant himself or upon his solicitor (*A.-G.* v. *L. Merchant* (1772), 2 Term Rep. 201, n.). It must be served within a reasonable time of the trial, *i.e.*, within such time as to enable the defendant to get the document from the place where it is (*R.* v. *Ellicombe* (1833), 5 C. & P. 522; *R.* v. *Haworth* (1830), 4 C. & P. 254; *R.* v. *Kitson* (1853), Dears. C. C. 187; *R.* v. *Barker* (1858), 1 F. & F. 326; *Hughes* v. *Budd* (1840), 8 Dowl. 315). A notice to produce should not be served on a Sunday (*Hughes* v. *Budd*, *supra*, *per* PATTESON, J., at p. 317).

(*x*) Wills on Evidence, 2nd ed., p. 359.

(*a*) *Doe* v. *Hodgson* (1840), 12 Ad. & El. 135; *Laxton* v. *Reynolds* (1854), 18

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If a document is in existence and its production is procurable by a *subpœna duces tecum*, secondary evidence cannot be given of it, unless such a *subpœna* is served on the person who has the document and he refuses on a good ground of privilege to produce the document (*b*).

If the person who has possession of the document is outside the United Kingdom, and all reasonable attempts have been made to procure the document and the person refuses to give it up, secondary evidence may, it seems, be given (*c*).

Secondary evidence of documents that cannot be produced.

760. If it is proved that it is impossible or highly inconvenient to produce a document or a thing on which there are inscriptions or representations which it is desired to prove, secondary evidence may be given of such document or thing (*d*).

On the same principle secondary evidence may be given of such a document or thing, if the original is in a foreign country by the law of which it cannot be removed (*e*).

Proof of public documents. Copies.

761. If a document is of a public nature, it is admissible in evidence on its mere production from the proper custody without further proof (*f*). Copies of such documents, if officially certified, are by various statutes made admissible in evidence in the place of the originals (*g*).

Jur. 963. But if the defendant does not produce the document when it is called for, and the prosecution tenders secondary evidence, the defendant is not precluded from then producing a document which he alleges is the original and from asking the witness who is giving secondary evidence whether it is not the original and, on the witness denying it, from giving evidence to prove that it is the original. The judge is bound in such a case to hear the evidence, and, if he is satisfied that it is the original, must exclude the secondary evidence (*Boyle* v. *Wiseman* (1855), 10 Exch. 647). The effect of such evidence being given, if the judge believes it, is to let in the document which the defendant alleges to be the original (*ibid.*).

(*b*) See *R.* v. *Reason* (1722), 1 Stra. 499, at p. 500; *Calcraft* v. *Guest*, [1898] 1 Q. B. 759, C. A.; *R.* v. *Dixon* (1765), 3 Burr. 1687.

(*c*) See *Boyle* v. *Wiseman* (1855), 10 Exch. 647, *per* PARKE, B., at p. 649.

(*d*) See *R.* v. *Hunt* (1820), 3 B. & Ald. 566, where secondary evidence was given of inscriptions and devices on banners carried at a public meeting (see, as to this case, *R.* v. *Hinley* (1843), 1 Cox, C. C. 12, *per* MAULE, J., at p. 13; and see *Doe* v. *Cole* (1834), 6 C. & P. 359, at p. 360; *Jones* v. *Tarleton* (1842), 9 M. & W. 675, at p. 677; *Mortimer* v. *McCallan* (1840), 6 M. & W. 58, at p. 68). But in *R.* v. *Edge* (1842), Wills on Circumstantial Evidence, 5th ed., pp. 260, 288, MAULE, J., refused to allow secondary evidence of the contents of a coffin-plate in a case where a body had been exhumed. The ground of this decision was that the coffin-plate was in the circumstances removable and might have been produced (see *R.* v. *Hinley* (1843), 1 Cox, C. C. 12, at p. 13). But in ordinary cases, where there has been a burial and no exhumation, secondary evidence of the inscription on a coffin-plate would be admitted.

(*e*) *Alivon* v. *Furnival* (1834), 1 Cr. M. & R. 277.

(*f*) For a list of such public documents, see Taylor on Evidence, 10th ed., Vol. II., p. 1150; and title EVIDENCE.

(*g*) As to the statutes which expressly provide for the proof of particular public documents by means of copies, see Taylor on Evidence, 10th ed., Vol. II., p. 1153; Wills on Evidence, 2nd ed., Appendix A, "Public Documents," p. 422; and title EVIDENCE. Any public document for the proof of which by means of a copy there is no statutory provision may be proved by an examined copy or extract signed and certified as a true copy or extract by the officer to whose custody the original is intrusted (Evidence Act, 1851 (14 & 15 Vict. c. 99),

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Public documents are documents drawn up by public functionaries in the executive, legislative, and judicial departments of Government with reference to the transactions which they are required to enter in the course of their public duty and which occur within the circle of their own personal knowledge and observation (*h*).

SUB-SECT. 3.—*Hearsay Evidence.*

Hearsay.

762. The rule as to the inadmissibility of hearsay applies in general to criminal trials. The exceptions to the rule also apply (*i*), but there are also two exceptions which are peculiar to criminal cases, namely, (1) dying declarations and (2) complaints in cases of rape and similar offences.

Dying declarations are only admissible where the death of the person who made them is the subject of the charge (*k*).

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s. 14). Proclamations, treaties, and other acts of state of any foreign State or of any British Colony, and all judgments and other judicial proceedings, and all affidavits, pleadings and other legal documents filed or deposited in any such court, may similarly be proved by authenticated copies (*ibid.*, s. 7). A conviction or acquittal of a person charged with an indictable offence may be proved by a copy of the record with the formal parts omitted, certified, or purporting to be certified, by the officer having custody of the records of the court where the conviction or acquittal took place (*ibid.*, s. 13); see also as to proof of conviction, Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s. 6; Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 18. Any proclamation, order, or regulation issued by the Sovereign or by the Privy Council, either before or after 25th June, 1868, and any proclamation, order, or regulation issued by the Treasury, the Admiralty, the Secretaries of State, the Board of Trade, and the Local Government Board may be proved by the production of a copy of the *Gazette* purporting to contain such proclamation etc., or by the production of a copy of such proclamation etc., purporting to be printed by the Government printer, or under the superintendence or authority of the Stationery Office, or by a copy or extract purporting to be certified (Documentary Evidence Act, 1868 (31 & 32 Vict. c. 37), s. 2; see also Documentary Evidence Act, 1882 (45 Vict. c. 9), and Documentary Evidence Act, 1895 (58 Vict. c. 9)).

(*h*) Taylor on Evidence, 10th ed., Vol. II., p. 1073.

(*i*) For instances of such exceptions in criminal cases, see *R.* v. *Bliss* (1837), 7 Ad. & El. 550 (admissions of deceased persons against interest); *R.* v. *Buckley* (1873), 13 Cox, C. C. 293 (statements by a deceased person in the course of his employment); *R.* v. *Blandy* (1752), 18 State Tr. 1118, 1135, *R.* v. *Johnson* (1847), 2 Car. & Kir. 354, *R.* v. *Conde* (1867), 10 Cox, C. C. 547, *R.* v. *Palmer* (1856), Shorthand notes, pp. 26, 38, 42 (evidence of Elizabeth Mills, Dr. Savage, and William Stevens), *R.* v. *Gloster* (1888), 16 Cox C. C. 471, 473, approved in *R.* v. *Perry* (1909), 2 Cr. App. Rep. 270; *Aveson* v. *Kinnaird* (*Lord*) (1805), 6 East, 188, at p. 198 (statements by a person as to his health and symptoms); *R.* v. *Berger*, [1894] 1 Q. B. 823, *R.* v. *Antrobus* (1835), 2 Ad. & El. 788, 794, *R.* v. *Bedfordshire* (*Inhabitants*) (1855), 4 E. & B. 535, at p. 541 (evidence of reputation on a question of public right). Evidence of reputation to prove a marriage is available in all criminal cases, except in bigamy (*R.* v. *Atkinson* (1814), 1 Russell on Crimes, 6th ed., p. 159; *R.* v. *Woodward* (1838), 8 C. & P. 561). In bigamy the prosecution cannot prove the first marriage by reputation (*Catherwood* v. *Caslon* (1844), 13 M. & W. 261, at p. 265); but even in bigamy, if the defendant sets up as a defence that at the time of the alleged "first marriage" the person with whom he or she went through the ceremony of marriage was already married and had a husband or wife alive, the defendant can prove by reputation the marriage which he sets up (*R.* v. *Wilson* (1862), 3 F. & F. 119).

(*k*) *R.* v. *Mead* (1824), 2 B. & C. 605; *R.* v. *Hutchinson* (1822), 2 B. & C. 608, n.; *R.* v. *Lloyd* (1830), 4 C. & P. 233; and see p. 589, *post*. In *R.* v. *Edmunds* (1909), 25 T. L. R. 658, C. C. A., depositions of a woman, taken when she expected to recover and on a charge of attempted murder, were held admissible on a charge of murdering the woman.

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The admissibility of the particulars of a complaint made soon after the commission of an alleged offence in the absence of the defendant by the person in respect of whom a crime is alleged to have been committed is peculiar to rape and similar offences (*l*). In other cases the fact of a complaint having been made is admissible, but the details are not (*m*).

SUB-SECT. 4.—*Confessions by Defendant.*

Admissions or confessions by defendant before trial.

763. All statements relevant to the issue which are made by a party (*n*) can be proved in evidence against the party who made them, unless they are privileged from disclosure (*o*), subject to this exception, that admissions or confessions of guilt made by a defendant before his trial can only be proved against him, if they were made freely and voluntarily *i.e.*, without being induced by hopes held out or fear or threats caused or used by a person in authority.

Only admissible if made voluntarily.

In giving evidence of such admissions or confessions it lies upon the prosecution to prove affirmatively to the satisfaction of the judge who tries the case that such admissions were not induced by any promise of favour or advantage or by the use of fear or threats or pressure by a person in authority (*p*).

Person in authority.

By a person in authority is meant any magistrate (*q*), any police or other officer or person having custody of the defendant (*r*), the prosecutor and any person acting on behalf of the prosecutor for the purpose of having the defendant in custody or preferring a complaint against him (*s*).

If the inducement is made by a person not in authority in the presence of a person in authority, and is acquiesced in by the person in authority, the confession made in consequence of such an

(*l*) *R.* v. *Lillyman*, [1896] 2 Q. B. 167, C. C. R.; *R.* v. *Osborne*, [1905] 1 K. B. 551, C. C. R.; *Beatty* v. *Cullingworth* (1896), 60 J. P. 740; *R.* v. *Rowland* (1898), 62 J. P. 459; *R.* v. *Kingham* (1902), 66 J. P. 393; *R.* v. *Hoodless* (1900), 64 J. P. 282; *R.* v. *Ingrey* (1900), 64 J. P. 107; *R.* v. *Rush* (1896), 60 J. P. 777; see p. 613, *post*.

(*m*) See *R.* v. *Wink* (1834), 6 C. & P. 397; *R.* v. *Ridsdale* (1837), Starkie on Evidence, 4th ed., 469. But see *R.* v. *Folley* (1896), 60 J. P. 569.

(*n*) See as to proof of handwriting, Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s. 8; *R.* v. *Silverlock*, [1894] 2 Q. B. 766, C. C. R.; and title EVIDENCE.

(*o*) See title EVIDENCE.

(*p*) 2 East, P. C. 657; *R.* v. *Thompson*, [1893] 2 Q. B. 12, C. C. R. If a confession "proceeds from remorse or a desire to make reparation for the crime, it is admissible; if it flows from hope or fear excited by a person in authority, it is inadmissible" (*ibid.*, *per* CAVE, J., at p. 15; and see *R.* v. *Warickshall* (1783), 1 Leach, 263). As to a compulsory examination under s. 17 of the Bankruptcy Act, 1883 (46 & 47 Vict. 52), see note (*q*) on p. 399, *post*.

(*q*) *R.* v. *Cooper* (1833), 5 C. & P. 535.

(*r*) See *R.* v. *Boswell* (1842), Car. & M. 584; *R.* v. *Shepherd* (1836), 7 C. & P. 579; *R.* v. *Doherty* (1874), 13 Cox, C. C. 23, 24; *R.* v. *Enoch* (1833), 5 C. & P. 539; *R.* v. *Windsor* (1864), 4 F. & F. 360.

(*s*) *R.* v. *Thompson* (1783), 1 Leach, 291; *R.* v. *Jones* (1809), Russ. & Ry. 152; *R.* v. *Richards* (1832), 5 C. & P. 318; *R.* v. *Hearn* (1841), Car. & M. 109; *R.* v. *Cass* (1784), 1 Leach, 293, n.; *R.* v. *Simpson* (1834), 1 Mood. C. C. 410; *R.* v. *Upchurch* (1836), 1 Mood. C. C. 465; *R.* v. *Partridge* (1836), 7 C. & P. 551; *R.* v. *Hewett* (1842), Car. & M. 534; *R.* v. *Fennell* (1881), 7 Q. B. D. 147, C. C. R.; *R.* v. *Rose* (1898), 18 Cox, C. C. 717, C. C. R.; *R.* v. *Thompson*, [1893] 2 Q. B. 12, C. C. R. At one time it seems to have been thought that a confession made in consequence of an inducement by any person was inadmissible (see *R.* v. *Dunn* (1831), 4 C. & P. 543; *R.* v. *Slaughter* (1831), 4 C. & P. 544, n.; *R.* v.

inducement is just as inadmissible as if it had been made by the person in authority (*t*)

An inducement made not to the accused himself, but to someone else, with the expectation that it will be communicated to the accused, may have the effect of making a confession inadmissible, unless it is shown that the confession was not brought about by the inducement (*a*).

It is for the judge in each case to decide whether on the facts the confession is or is not admissible (*b*).

Thomas (1834), 6 C. & P. 353; *R.* v. *Walkley* (1833), 6 C. & P. 175; and see *R.* v. *Spencer* (1837), 7 C. & P. 776; *R.* v. *Kingston* (1830), 4 C. & P. 387; but these cases cannot now be considered as authorities (see *R.* v. *Taylor* (1839), 8 C. & P. 733). A master of a servant is not a person in authority with regard to this rule, if the master is not the prosecutor, and if the charge in respect of which the confession is made has no relation to the person or property of the master or of any member of his family (*R.* v. *Moore* (1852), 2 Den. 522; and see *R.* v. *Sleeman* (1853), Dears. C. C. 249). In *R.* v. *Simpson* (1834), 1 Mood. C. C. 410, a confession made in consequence of threats and promises by the prosecutor's relations was held inadmissible. In cases of felony anyone can arrest the offender (see p. 296, *ante*), and therefore anyone who threatens to imprison a person accused of felony puts himself in the position of a prosecutor within the meaning of the rule and is a person in authority (*R.* v. *Parratt* (1831), 4 C. & P. 570).

(*t*) *R. v. Laugher* (1846), 2 Car. & Kir. 225; *R.* v. *Taylor* (1839), 8 C. & P. 733; see *R.* v. *Pountney* (1836), 7 C. & P. 302; but see *R.* v. *Row* (1809), Russ. & Ry. 153; *R.* v. *Reeve* (1872), L. R. 1 C. C. R. 362. But a statement made by one of two prisoners to the other in the presence of the prosecutor and a constable ("You had better tell Mr.——— the truth") does not come within the rule and does not make a subsequent confession by the other prisoner inadmissible, for the confirmation of a person in authority cannot be necessarily inferred in such a case (*R.* v. *Parker* (1861), Le. & Ca. 42).

(*a*) *R.* v. *Thompson*, [1893] 2 Q. B. 12, C. C. R. See *R.* v. *Nute*, cited *R.* v. *Hewett* (1842), Car. & M. 534, at p. 535.

(*b*) Confessions have been held inadmissible in the following cases:—*R.* v. *Thompson* (1783), 1 Leach, 291, where the person who apprehended the accused said to him, "Unless you give me a more satisfactory account, I shall take you before a magistrate"; *R.* v. *Parratt* (1831), 4 C. & P. 570, where the captain of a vessel in which the accused was a sailor said, "If you do not tell me who your partner was, I will commit you to prison"; *R.* v. *Richards* (1832), 5 C. & P. 318, where the prosecutrix said to the accused that if she did not tell all about it that night, the constable would be sent for next morning; *R.* v. *Hearn* (1841), Car. & M. 109, where goods had been stolen and the owner of the goods, who was also the master of the accused, said that if she did not tell the truth "about the things that were found in the pump," he would send for the constable to take her; *R.* v. *Luckhurst* (1853), Dears. C. C. 248, where the prosecutor said to the prisoner, "If you don't tell me, I will give you in charge to the police, till you do tell me"; *R.* v. *Coley* (1868), 10 Cox, C. C. 536, where an inspector of police told the prisoner that "if she did not tell, she might get herself into trouble, and that it would be the worse for her"; *R.* v. *Cass* (1784), 1 Leach, 293, n., where the prosecutor said to the accused, "If you tell me where they" (*i.e.*, the stolen goods) "are, I will be favourable to you"; *R.* v. *Kingston* (1830), 4 C. & P. 387, where the surgeon who was called to see a person whom the defendant was accused of having poisoned said to the defendant, "You are under suspicion of this, and you had better tell all you know"; *R.* v. *Partridge* (1836), 7 C. & P. 551, where the prosecutor said to the accused, "I should be obliged to you, if you would tell us what you know about it; if you will not, we of course can do nothing"; *R. v. Garner* (1848), 1 Den. 329, where a doctor in the presence of the master and mistress of the prisoner, who was accused of poisoning her mistress, said it would be better for her to speak the truth (and see *R.* v. *Simpson* (1834), 1 Mood. C. C. 410); *R.* v. *Fennell* (1881),

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7 Q. B. D. 147, C. C. R., where the prosecutor said to the accused "—— tells me you are making housebreaking implements; if that is so, you had better tell the truth, it may be better for you"; *R.* v. *Jones* (1809), Russ. & Ry. 152, where the prosecutor said to the accused that he only wanted his money, and if the accused gave him that, he might go to the devil, if he pleased; *R.* v. *Windsor* (1864), 4 F. & F. 360, where the prisoner said to the searcher of female prisoners, who was with her in a room in the gaol to search her, "If I tell the truth, shall I be hung," and the searcher said, "No, nonsense, you will not be hung"; *R.* v. *Enoch* (1833), 5 C. & P. 539, where a woman who had charge of the prisoner, who was accused of murdering her child, told her she had better tell the truth, or it would lie upon her and the man would go free; *R.* v. *Boswell* (1842), Car. & M. 584, where a prisoner made a confession after a constable had given him a handbill offering a reward for the discovery of a murder and a recommendation of pardon to an accomplice who did not actually commit the murder (in this case the prisoner mentioned that he made his confession because Government had offered a free pardon; if the offer of a pardon does not induce the confession, the confession is admissible; *R.* v. *Dingley* (1845), 1 Car. & Kir, 637; see *R.* v. *Blackburn* (1853), 6 Cox, C. C. 333; *R.* v. *Hall* (1790), 2 Leach, 559, n.; *R.* v. *Gillis* (1866), 11 Cox, C. C. 69; *R.* v. *Hewett* (1842), Car. & M. 534. where the prosecutrix said to the prisoner that she would forgive the prisoner if the prisoner spoke the truth (this was held to make inadmissible confessions made subsequently, but under the influence of the original promise); and see *R. v. Mansfield* (1881), 14 Cox, C. C. 639; *R.* v. *Warringham* (1851), 2 Den. 447 n., where the prosecutor said to a prisoner accused of larceny, "It is of no use to deny; I have seen the piece of goods at the station house," and on the prisoner admitting that he had "done it," said it would be best for him if he would tell how it was transacted; *R.* v. *Doherty* (1874), 13 Cox, C. C. 23, where a police constable said to the prisoner, "It is better for you to tell the truth and not put people to the extremities you are doing" (this was held to make inadmissible a statement made on the same day about eight hours afterwards to another constable); and see *R.* v. *Bate* (1871), 11 Cox, C. C. 686; *R.* v. *Laugher* (1846), 2 Car. & Kir. 225; *R.* v. *Shepherd* (1836), 7 C. & P. 579; *R.* v. *Thompson*, [1893] 2 Q. B. 12, C. C. R., where the prosecutor said to the prisoner's brother, "It will be the right thing for your brother to make a statement"; *R.* v. *Rose* (1898), 67 L. J. (Q. B.) 289, C. C. R., where the prosecutor said to the prisoner, who was accused of stealing corn, "You had better tell me all about the corn that is gone." Such expressions as "You had better tell the truth," or "It is better for you to tell the truth," when uttered by a person in authority, have acquired a sort of technical meaning importing either a threat or a benefit (*R.* v. *Jarvis* (1867), L. R. 1 C. C. R. 96, *per* KELLY, C.B., and WILLES, J., at p. 99).

Confessions have been held admissible in the following cases:—*R.* v. *Row* (1809), Russ. & Ry. 153, where persons who had nothing to do with the apprehension, prosecution, or examination of the prisoner admonished him in the presence of a constable to tell the truth; and see *R.* v. *Gibbons* (1823), 1 C. & P. 97; *R.* v. *Moore* (1852), 2 Den. 522; *R.* v. *Sleeman* (1853), Dears. C. C. 249; *R.* v. *Parker* (1861), Le & Ca. 42; *R.* v. *Reeve* (1872), L. R. 1 C. C. R. 362; *R.* v. *Gilham* (1828), 1 Mood. C. C. 186, where the confession was made in consequence of the persuasion of a clergyman; *R.* v. *Tyler* (1823), 1 C. & P. 129, where the inducement was by a person not in authority and the confession to a person in authority; *R.* v. *Clewes* (1830), 4 C. & P. 221, where a confession or statement was made after the inducement ceased to operate; and see *R.* v. *Richards* (1832), 5 C. & P. 318; *R.* v. *Howes* (1834), 6 C. & P. 404; *R.* v. *Dingley* (1845), 1 Car. & Kir. 637; *R.* v. *Rosier* (1821), Phillipps on Evidence, 10th ed., Vol. I., 414; *R.* v. *Lingate* (1815), Phillipps on Evidence, 10th ed., Vol. I., 414; *R.* v. *Jarvis* (1867), L. R. 1 C. C. R. 96, where a person in authority advised the prisoner on moral grounds to speak the truth; and see *R.* v. *Wild* (1835), 1 Mood. C. C. 452; *R.* v. *Reeve* (1872), L. R. 1 C. C. R. 362. A confession is admissible, if the inducement has no reference to the defendant's escape from the charge brought against him (*R.* v. *Lloyd* (1834), 6 C. & P. 393; *R.* v. *Green* (1834), 6 C. & P. 655), or where the words used by the person in authority import no promise or threat (*R.* v. *Jones* (1872), 12 Cox, C. C. 241, C. C. R.). And a confession was held to be admissible, where it was made after a police constable had told the prisoner that "he need not say anything to

A defendant may be convicted on his own confession without any corroborating evidence (*c*).

764. A statement made by another person by the authority of the prisoner is evidence against the prisoner as much as if he had made the statement himself (*d*).

Confession by one or two or more defendants.

765. If there are several persons accused of a crime and one of them makes confessions or admissions, such confessions or admissions are evidence only against the party who made them (*e*); but where

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criminate himself," but "what he did say would be taken down and used as evidence against him"; see *R.* v. *Baldry* (1852), 2 Den. 430, disapproving of the following cases:—*R.* v. *Drew* (1837), 8 C. & P. 140; *R.* v. *Morton* (1843), 2 Mood. & R. 514; *R.* v. *Furley* (1844), 1 Cox, C. C. 76; *R.* v. *Harris* (1844), 1 Cox, C. C. 106. As to confessions made under the influence of drink, see *R.* v. *Spilsbury* (1835), 7 C. & P. 187; *R.* v. *Sexton* (1822), 3 Russell on Crimes, 482. The mere use of artifice to obtain a confession does not make the confession inadmissible, but a confession so obtained has very little weight (*R.* v. *Thomas* (1836), 7 C. & P. 345; *R.* v. *Shaw* (1834), 6 C. & P. 372; *R.* v. *Derrington* (1826), 2 C. & P. 418; *R.* v. *Burley* (1818), 1 Phillipps on Evidence, 10th ed., 420). What a prisoner is overheard to say to another person or to himself is receivable in evidence against him, but see *per* ALDERSON, B., *R.* v. *Simons* (1834), 6 C. & P. 540, at p. 541; and *Earle* v. *Picken* (1833), 5 C. & P. 542, n. Statements made by a defendant in answer to questions put by a police constable or prosecutor are not *ipso facto* inadmissible (*R.* v. *Reason* (1872), 12 Cox, C. C. 228; *R.* v. *Brackenbury* (1893), 17 Cox, C. C. 628; *R.* v. *Hirst* (1896), 18 Cox, C. C. 374; *Rogers* v. *Hawken* (1898), 67 L. J. (Q. B.) 526); but where such statements are made under pressure by the police constable or prosecutor, as where there is improper cross-examination of a prisoner in custody, or an attempt made to trap the accused or to manufacture evidence, such statements may be rejected as inadmissible (*R.* v. *Male* (1893), 17 Cox, C. C. 689; *R.* v. *Histed* (1898), 19 Cox, C. C. 16; *R.* v. *Morgan* (1895), 59 J. P. 827; *R.* v. *Knight* (1905), 20 Cox, C. C. 711). A constable may ask a suspected person questions before taking him into custody, to ascertain whether there are grounds for apprehending him; a constable should not ask questions of a person in custody (*R.* v. *Berriman* (1854), 6 Cox, C. C. 388; *R.* v. *Reason* (1872), 12 Cox, C. C. 228), but the mere fact that a statement is made in reply to a question put by a constable does not make the statement inadmissible (*R.* v. *Best*, [1909] 1 K. B. 692, C. C. A., disapproving of *R.* v. *Gavin* (1885), 15 Cox, 656). A magistrate has no right to ask the accused any questions, except questions incidental to the conduct of the examination, *e.g.*, whether the accused wishes to cross-examine a witness, or to give evidence, and the statutory questions prescribed by s. 18 of the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), unless the accused gives evidence under the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36); if the magistrate does interrogate an accused who does not so give evidence, the answer of the accused is inadmissible as evidence against him (*R.* v. *Berriman* (1854), 6 Cox, C. C. 388; *R.* v. *Pettit* (1850), 4 Cox, C. C. 164; *R.* v. *Wilson* (1817), Holt (N. P.), 597). The cases of *R.* v. *Rees* (1836), 7 C. & P. 568, and *R.* v. *Bartlett* (1837), 7 C. & P. 832, cannot now be regarded as authorities to the contrary.

(*c*) But see note (*c*) on p. 378, *ante*. As to treason, see *R.* v. *Tong* (1662), Fost. 240; *R.* v. *Francia* (1716), 1 East, P. C. 133; *R.* v. *Willis* (1710), Fost. 241; *R.* v. *Vaughan* (1696), Fost. 240; *R.* v. *Smith* (1708), Fost. 242.

(*d*) *R.* v. *Mallory* (1884), 13 Q. B. D. 33, C. C. R. But see *R.* v. *Downer* (1880), 14 Cox, C. C. 486, C. C. R., where it was held that a letter written by a solicitor "in consequence of" an interview with the prisoner was not equivalent to a letter written by the solicitor by the instructions of the prisoner, and was therefore not evidence against the prisoner. An act done by an agent will not make the principal criminally responsible, unless the principal authorised the act (see *Melville's* (*Lord*) *Case* (1806), 29 State Tr. 550, at 764).

(*e*) *R.* v. *Tong*, *supra*; *R* v. *Boroski* (1682), 9 State Tr. 1, at 23. See *R.* v. *Fletcher* (1829), 1 Lew. C. C. 107. In an indictment against an accessory the

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confessions or admissions are made by an accomplice in the presence of the other party in such circumstances that the other party has an opportunity of contradicting such statements at once so far as they concerned himself and does not contradict them, then the statement of the accomplice becomes evidence against such other party, and a confession may be inferred from the conduct and demeanour of the prisoner when he hears such a statement (*f*).

Statement made in the presence of the defendant.

766. Any statement made in the presence of the accused is evidence against him, if he had an opportunity of contradicting it at once and did not, and if the circumstances are such that he would naturally be expected to contradict it, if he did not admit it (*g*).

Evidence of this kind is not admissible at all against the accused, when the statement is made in such circumstances that he had no opportunity of contradicting it at once, *e.g.*, if it is made when the prisoner is before a magistrate (*h*).

The whole of a confession must be given in evidence.

767. If evidence of a confession by an accused person is given on behalf of the prosecution, the whole of the confession must be used; the prosecution must take the whole of it together, and cannot select one part and leave another (*i*). But if part of a statement tends to show the guilt of the accused and part of it to show his innocence, the jury may, if they choose, believe the part which is against him and disbelieve that which is in his favour (*k*).

Facts discovered by means of a statement which is inadmissible may be proved.

Even if a confession is inadmissible in evidence, yet facts the knowledge of which has been obtained by means of such inadmissible confession may be proved on behalf of the prosecution (*l*).

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confession of the principal is not evidence of the guilt of the principal as against the accessory (*R.* v. *Turner* (1832), 1 Mood. C. C. 347). As to evidence on a charge of murder of the dying declarations of the murdered person who is *particeps criminis*, see *R.* v. *Tinckler* (1781), 1 East, P. C. 354. Statements made, like acts done, by one of several accomplices or co-conspirators in pursuance of a common design, are evidence against the others (*R.* v. *Watson* (1817), 2 Stark. 116, at p. 140; *R.* v. *Desmond* (1868), 11 Cox, C. C. 146; *R.* v. *Blake* (1844), 6 Q. B. 126); *aliter* of statements which are made not in pursuance of the common design (*R.* v. *Blake, supra*).

(*f*) Phillipps on Evidence, 10th ed., Vol. I., 405; *R.* v. *Bromhead* (1906), 71 J. P. 103, C. C. R. See *R.* v. *Male* (1893), 17 Cox, C. C. 689; *R.* v. *Hirst* (1896), 18 Cox, C. C. 374; *R.* v. *Pearson* (No. 1) (1908), 72 J. P. 449.

(*g*) See *R.* v. *Smithies* (1832), 5 C. & P. 332; *R.* v. *Bartlett* (1837), 7 C. & P. 832, where the rule was applied to a statement made by a wife in the presence of her husband, although the wife could not be called against her husband to prove such a statement; but see *R.* v. *Smith* (1897), 18 Cox, C. C. 470; *Wiedemann* v. *Walpole*, [1891] 2 Q. B. 534, C. A., *per* Lord ESHER, M.R., at p. 537; *R.* v. *Pearson, supra.*

(*h*) *R.* v. *Appleby* (1821), 3 Stark. 33; *Melen* v. *Andrews* (1829), Mood. & M. 336; *R.* v. *Turner* (1832), 1 Mood. C. C. 347; and see *R.* v. *Smith* (1897), 18 Cox, C. C. 470.

(*i*) *R.* v. *Jones* (1827), 2 C. & P. 629.

(*k*) *R.* v. *Higgins* (1829), 3 C. & P. 603; *R.* v. *Clewes* (1830), 4 C. & P. 221; *R.* v. *Steptoe* (1830), 4 C. & P. 397.

(*l*) *R.* v. *Warickshall* (1783), 1 Leach, 263. In *R.* v. *Griffin* (1809), Russ. & Ry. 151, the prosecutor was not allowed to prove a confession by the prisoner on a charge of larceny, but was allowed to prove "that the prisoner brought

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Written confession.

768. If a confession has been reduced to writing, and it is written or signed by the accused, the writing must be given in evidence and, if proved, read by the officer of the court. If it is not written by the accused, but taken down by someone else and not signed by the prisoner, the confession can only be proved by the person who took it down, who must state what the accused said, and may use the writing to refresh his memory (*m*).

Statement of defendant before examining justices.

769. At the preliminary examination into a charge before examining justices the defendant is asked at the close of the case for the prosecution whether he wishes to say anything in answer to the charge and is expressly cautioned. Any statement that the defendant then makes, if it appears on the depositions, may be given in evidence against him on his trial; and any statement made by him, either before or after he is so asked, may also be given in evidence against him, if it appears on the depositions (*n*).

Evidence given by defendant admissible.

Any evidence which a defendant gives on oath or affirmation before the examining justices under the Criminal Evidence Act, 1898 (*o*), may also be used against him on his trial (*p*).

Any evidence which a defendant has given on a former occasion as a witness is evidence against him, if properly proved (*q*),

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him a guinea and a bank note, which he gave up to the prosecutor as one of the notes he had stolen." But see *R.* v. *Jones* (1809), Russ. & Ry. 152; *R.* v. *Jenkins* (1822), Russ. & Ry. 492. If a prisoner makes a statement describing where articles connected with a crime are to be found and such articles are found in consequence of the statement, the finding of the articles may be proved, although the statement itself may be inadmissible.

(*m*) *R.* v. *Layer* (1722), 16 State Tr. 94, 214; *R.* v. *Swatkins* (1831), 4 C. & P. 548, at p. 550; see *R.* v. *Gay* (1835), 7 C. & P. 230.

(*n*) See p. 316, *ante*. Such statements, however, if made by a prisoner who does not give evidence, but who is interrogated by the magistrate, are inadmissible (*R.* v. *Berriman* (1854), 6 Cox, C. C. 388; and see p. 397, *ante*).

(*o*) 61 & 62 Vict. c. 36; and see p. 317, *ante*.

(*p*) *R.* v. *Bird* (1898), 19 Cox, C. C. 180, C. C. R.

(*q*) Depositions of the defendant who is called as a witness at a coroner's inquisition are evidence against him (*R.* v. *Bateman* (1866), 4 F. & F. 1068; *R.* v. *Colmer* (1864), 9 Cox, C. C. 506; but see *R.* v. *Wheeley* (1838), 8 C. & P. 250; *R.* v. *Owen* (1839), 9 C. & P. 83, 238; *R.* v. *Sandys* (1841), Car. & M. 345). Depositions of the defendant upon an inquiry before commissioners appointed to investigate the origin of fires (in Quebec), and authorised to examine witnesses on oath, were held by the Privy Council to be admissible in evidence against him on his trial for arson (*R.* v. *Coote* (1873), L. R. 4 P. C. 599); and see *R.* v. *Goldshede* (1844), 1 Car. & Kir. 657; *R.* v. *Chidley* (1860), 8 Cox, C. C. 365; *R.* v. *Laurent* (1898), 62 J. P. 250. Under the bankruptcy law (see Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 17 (8), and title BANKRUPTCY, Vol. II., p. 73) a bankrupt in his examination in bankruptcy is bound to answer all questions touching matters relating to his trade, dealings, or estate, or which might tend to disclose any secret grant, conveyance, or concealment of his lands, tenements, goods, money or debts, and he cannot object that his answers may incriminate him, and his answers, though tending to incriminate him, may be given in evidence against him on a criminal charge, except in a prosecution for the misdemeanours mentioned in s. 1 of the Larceny Act, 1901 (1 Edw. 7, c. 10), and in ss. 77 to 84 of the Larceny Act, 1861 (24 & 25 Vict. c. 96); see Larceny Act, 1861, s. 85; Larceny Act, 1901, s. 2; and Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 27; and see *R.* v. *Scott* (1856), Dears. & B. 47; *R.* v. *Cross* (1856), Dears. & B. 68; *R.* v. *Robinson* (1867), L. R. 1 C. C. R. 80; *R.* v. *Hillam* (1872), 12 Cox, C. C.

SECT. 2. Method of Proof.

unless the defendant was wrongly compelled to answer questions tending to criminate him which he objected to answer (*r*), or unless there is some statutory provision making such evidence inadmissible in other proceedings (*s*).

SECT. 3.—*Competency of Witnesses in Criminal Proceedings.*

SUB-SECT. 1.—*In General.*

Competency of witnesses in civil proceedings.

770. All persons are competent to give evidence except (1) children of such tender years that they have not sufficient intelligence to testify or a proper appreciation of the duty of speaking the truth; (2) idiots and insane persons who at the time of being tendered as witnesses are mentally incapable of testifying; (3) deaf and dumb persons, if they are unable by signs or otherwise to understand what is said to them or to communicate their thoughts to others, and (4) other persons who from temporary causes, such as illness and drunkenness, are for the time incapable of understanding questions and of giving a rational account of events (*t*).

174; *R.* v. *Cherry* (1871), 12 Cox, C. C. 32; *R.* v. *Widdop* (1872), L. R. 2 C. C. R. 3; *R.* v. *Erdheim*, [1896] 2 Q. B. 260, C. C. R. A bankrupt, when so examined, might object to answer a question on the ground that it does not relate to the matter on which he may be examined; but, if he does not so object and answers a question which does not relate to such matters, his answer may be proved against him in other proceedings (*R.* v. *Sloggett* (1856), Dears. C. C. 656). A witness, other than the bankrupt, examined under s. 17 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), may refuse to answer questions on the ground that his answers may incriminate him (*Re Frith, Ex parte Schofield* (1877), 6 Ch. D. 230, C. A.). The answers of a bankrupt in an examination under s. 24 or s. 27 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), cannot be used against him in prosecutions for the misdemeanours mentioned in s. 1 of the Larceny Act, 1901, or ss. 77—84 of the Larceny Act, 1861 (Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 27 (2)). *Quære*, whether such answers can be used in prosecutions for other offences; see Archbold, Criminal Pleading, 23rd ed., p. 329. The exception in the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 27 (2), as regards the misdemeanours specified above, does not apply to a statement of affairs filed by a bankrupt under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 16, and such a statement may be used in evidence against him in a prosecution under ss. 77—84 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), and s. 1 of the Larceny Act, 1901 (1 Edw. 7, c. 10) (*R.* v. *Pike*, [1902] 1 K. B. 552, C. C. R.). As to a bankrupt's balance-sheet being used in evidence against him, see *R.* v. *Britton* (1833), 1 Mood. & R. 297; *R.* v. *Wheater* (1838), 2 Mood. C. C. 45, 51.

(*r*) *R.* v. *Garbett* (1847), 1 Den. 236; see *R.* v. *Merceron* (1818), 2 Stark. 366.

(*s*) Thus, under the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 59 (1) (b), an answer by a person to a question put by or before any election court is not, except in the case of criminal proceedings for perjury in respect of such evidence, admissible in evidence against him in any criminal proceeding (Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), ss. 30, 35; and *R.* v. *Buttle* (1870), L. R. 1 C. C. R. 248; *R.* v. *Slator* (1881), 8 Q. B. D. 267). See also Exhibition Medals Act, 1863 (26 & 27 Vict. c. 119), s. 5; Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 103; Explosive Substances Act, 1883 (46 Vict. c. 3), s. 6 (2); Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28, s. 19 (2).

(*t*) It has been said that a person under sentence of death is civilly dead, and therefore incompetent as a witness (*R.* v. *Webb* (1867), 11 Cox, C. C. 133); but see Evidence Act, 1843 (6 & 7 Vict. c. 85), s. 1; Forfeiture Act, 1870

SECT. 3. Competency of Witnesses in Criminal Proceedings.

Persons who are not incompetent for the specified reasons to give evidence are compellable to give evidence (*a*), unless they are privileged from making disclosures (*b*). But the defendant in a criminal prosecution and the husband or wife of the defendant are incompetent witnesses for the prosecution except in certain cases (*c*), and in most criminal proceedings (*d*) are only competent witnesses for the defence subject to certain limitations.

Defendant and wife or husband of defendant.

Witnesses who are competent to give evidence in criminal cases are also compellable to give evidence subject to the same grounds of privilege as in civil proceedings (*e*), and subject to this further

Compellable witnesses.

(33 & 34 Vict. c. 23), s. 1, and *R.* v. *Fitzgerald* (1884), cited in Taylor on Evidence, 10th ed., Vol. II., p. 959.

(*a*) The common law, it has been said, knows no distinction between competent and compellable witnesses (Taylor on Evidence, 10th ed., Vol. I., p. 647, n. 6), but it seems that the King, foreign sovereigns and foreign ambassadors, who are not compellable to give evidence, are competent witnesses: see Taylor on Evidence, 10th ed., Vol. II., 989.

(*b*) Persons who are privileged from making disclosures are—husbands and wives, who are privileged from disclosing communications made to one another during marriage; lawyers and clients, who are privileged from disclosing confidential communications made for the purpose of obtaining legal advice (except communications made for the purpose of committing a crime, or communications which are part of a criminal or unlawful proceeding); public officers, who are privileged from disclosing facts or documents the disclosure of which they declare to be injurious in the public interest. A witness may also refuse to answer a question the answer to which may tend to criminate him by exposing him to a criminal charge, or to a penalty or forfeiture. It seems that a minister of religion is not privileged from giving evidence of confessions made to him under the seal of secrecy (see title EVIDENCE). The judge who tries a case cannot be called as witness in the case, and, it seems, may object to give evidence in another case as to matters with which he became acquainted while he was acting as judge (Taylor on Evidence, 10th ed., Vol. I., 665; Vol. II., 987). As to advocates giving evidence of facts etc. which they have learned while acting as advocates, but which were not confidentially communicated to them, see title BARRISTERS, Vol. III., p. 396.

(*c*) See p. 402, *post*.

(*d*) See p. 405, *post*.

(*e*) For privilege in criminal cases, see, as to husbands and wives, Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (d); as to lawyers and clients, *Du Barré* v. *Livette* (1791), Peake, 108; *R.* v. *Cox and Railton* (1884), 14 Q. B. D. 153, C. C. R.; *R.* v. *Jones* (1846), 1 Den. 166; *R.* v. *Farley* (1846), 2 Car. & Kir. 313; *R.* v. *Hayward* (1846), 2 Car. & Kir. 234; *R.* v. *Brewer* (1834), 6 C. & P. 363; *R.* v. *Brown* (1862), 9 Cox, C. C. 281; *R.* v. *Tuffs* (1848), 1 Den. 319; *R.* v. *Avery* (1838), 8 C. & P. 596; *R.* v. *Watkinson* (1740), 2 Stra. 1122; *R.* v. *Downer* (1880), 14 Cox, C. C. 486, C. C. R. As to public officers, see *R.* v. *Fergus O'Connor* (1843), 4 State Tr. (N. S.) 935, at p. 1050. Police officers and public officials are privileged from disclosing the source of their information, and witnesses for the Crown in public prosecutions are privileged from disclosing the channel through which they have communicated information (*R.* v. *Watson* (1817), 32 State Tr. 1, at p. 100; *R.* v. *Smith O'Brien* (1848), 7 State Tr. (N. S.) 1; *R.* v. *Hardy* (1794), 24 State Tr. 199, at p. 753; *R.* v. *Richardson* (1863), 3 F. & F. 693; *Marks* v. *Beyfus* (1890), 25 Q. B. D. 494, C. A.). As to incriminating questions, see *R.* v. *Slaney* (1832), 5 C. & P. 213; *R.* v. *Garbett* (1847), 1 Den. 236; *R.* v. *Coote* (1873), L. R. 4 P. C. 599; *R.* v. *Adey* (1831), 1 Mood. & R. 94; *R.* v. *Sloggett* (1856), Dears. C. C. 656; *R.* v. *Boyes* (1861), 1 B. & S. 311; *R.* v. *Kinglake* (1870), 11 Cox, C. C. 499; *R.* v. *Reading* (1679), 7 State Tr. 259, 296. As to prisoner giving evidence on his own behalf, see p. 404, *post*. A communication made by way of confession to a minister of religion, is probably not privileged and the recipient may be compelled to disclose it, though in many instances the judges have shown a great disinclination to compel such disclosure;

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exception which is peculiar to criminal procedure, that the defendant and the wife or husband of the defendant are not compellable to give evidence except in certain cases (*f*). In criminal as in civil cases it is for the judge to decide on the competency of a witness (*g*).

SUB-SECT. 2.—*Evidence of Defendant.*

Evidence of defendant not admissible at common law.

771. The defendant in a criminal proceeding was not at common law (*h*) a competent witness either for the prosecution or for the defence on his trial. He could, however, make a statement not on oath, and he still can do this instead of giving evidence (*i*).

If a defendant is indicted jointly with other persons, he cannot at common law (*k*) give evidence on his trial against or for any of his co-defendants, if they are tried along with him; but, if two or more defendants, though indicted jointly, are tried separately, a defendant who is not being tried may give evidence against or for a co-defendant (*l*).

A defendant who, being indicted with others, has pleaded guilty may give evidence against or for his co-defendants, and even a defendant who has pleaded not guilty, if in the course of the trial he withdraws his plea and pleads guilty, or if he is acquitted, can give evidence against or for his co-defendants. If an indictment contains several counts and one of the defendants pleads guilty to one of the counts, and it is desired to call him as witness against another defendant, the proper course is to take a verdict of acquittal on the other counts before calling him.

A defendant in respect of whom a verdict of not guilty or a *nolle prosequi* has been entered may give evidence for or against a co-defendant (*m*).

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see 2 Co. Inst. 629; *Du Barré* v. *Livette* (1791), Peake, 108; *Butler* v. *Moore* (1802), McNally, Evidence, Vol. I., p. 253; *Broad* v. *Pitt* (1828), 3 C. & P. 518; *R.* v. *Gilham* (1828), 1 Mood. C. C. 186; *R.* v. *Griffin* (1853), 6 Cox, C. C. 219; *R.* v. *Hay* (1860), 2 F. & F. 4.

(*f*) See pp. 403, 406, *post.*

(*g*) *R.* v. *Whitehead* (1866), L. R. 1 C. C. R. 33; and see *R.* v. *Wakefield* (1827), 2 Lew. C. C. 279. Questions of this kind are often decided on the *voir dire*, before a witness is sworn, but if a witness who has been admitted as competent gives evidence, and is afterwards found to be incompetent, his evidence may be withdrawn from the jury (*R.* v. *Whitehead, supra*).

(*h*) As to the statutory modification of the common law rule, see p. 403, *post.*

(*i*) *R.* v. *Hull* (1880), Archbold, Criminal Pleading etc., 23rd ed., p. 210; *R.* v. *Blades* (1880), *ibid.*; *R.* v. *Doherty* (1887), 16 Cox, C. C. 306; *R.* v. *Millhouse* (1885), 15 Cox, C. C. 622; *R.* v. *Shimmin* (1882), 15 Cox, C. C. 122; *R.* v. *Sherriff* (1903), 20 Cox, C. C. 334. The right was preserved by the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (h) (see *R.* v. *Pope* (1902), 18 T. L. R. 717). There has been considerable difference of opinion among the judges as to the time when the statement should be made; some judges have ruled that the statement must be made before the speech of the prisoner's counsel (see *R.* v. *Blades, supra*; *R.* v. *Doherty, supra*; *R.* v. *Pope, supra*; *R.* v. *Sherriff, supra*); others have allowed it to be made afterwards (*R.* v. *Hull, supra*; *R.* v. *Millhouse, supra*; *R.* v. *Shimmin, supra*).

(*k*) As to the statutory modification of the common law rule, see p. 403, *post.*

(*l*) *R.* v. *Payne* (1872), L. R. 1 C. C. R. 349; *R.* v. *Bradlaugh* (1883), 15 Cox, C. C. 217; *Winsor* v. *R.* (1866), L. R. 1 Q. B. 390, Ex. Ch.

(*m*) *Wright* v. *Paulin* (1824), Ry. & M. 128; *R.* v. *Rowland* (1826), Ry. &

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Statutory exceptions.

772. In a prosecution for the non-repair of a highway or bridge or for a nuisance to a highway, river, or bridge, and other prosecutions which are instituted for the purpose of trying or enforcing a civil right only, it is provided by statute (*n*) that the defendant shall be a competent and compellable witness for either the prosecution or the defence (*o*). In no other case is a defendant competent to give evidence for the prosecution on his trial (*a*).

When defendant is both a competent and compellable witness.

773. Every defendant is now by statute a competent witness for the defence at every stage of criminal proceedings either on his own behalf or on behalf of any person who is tried along with him, but he cannot be called as a witness except upon his own application (*b*);

When defendant is a competent but not a compellable witness.

M. 401; *R.* v. *O'Donnell* (1857), 7 Cox, C. C. 337; *R.* v. *Hinks* (1845), 1 Den. 84; *R.* v. *Gallagher* (1875), 13 Cox, C. C. 61, C. C. R. As to *nolle prosequi*, see p. 350, *ante*.

(*n*) Evidence Act, 1877 (40 & 41 Vict. c. 14).

(*o*) *I.e.*, the defendant is compellable to give evidence for the prosecution, competent to give evidence on his own behalf, and compellable to give evidence for the defence of other persons who are indicted along with him.

(*a*) The Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 12, as amended by the Children Act, 1908 (8 Edw. 7, c. 67) (see schedule), provides that a person accused of any offence under the first-named Act is to be competent, but not compellable, to give evidence. This means, it seems, to give evidence for the defence only; the section as it stands might seem to sanction the giving of evidence by the accused in such cases for the prosecution, but, in the absence of express words giving such sanction or of a provision making the defendant a compellable as well as a competent witness, the section, so far as it relates to the person charged, would probably be held to refer to the defence only. If this part of the section only refers to evidence for the defence, it seems unnecessary, as the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), which permits a defendant in a criminal prosecution to give evidence, applies to all criminal proceedings (see *Charnock* v. *Merchant*, [1900] 1 Q. B. 474). The language of the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 12, is mainly taken from the repealed Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41), s. 12, which, being passed before the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), was then needed, as without it the accused could not give evidence. No such provision was needed after the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), and it is not clear whether its insertion in the Act of 1904 (4 Edw. 7, c. 15), has any effect as regards the evidence of the person charged. It seems to have been inserted *per incuriam*.

(*b*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1. The Act came into force on 12th October, 1898 (s. 7 (2)), and applies to all criminal proceedings notwithstanding any enactment in force at the commencement of the Act, but does not affect the provisions of the Evidence Act, 1877 (40 & 41 Vict. c. 14) (see *supra*). At the time of the passing of the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), there were a number of statutes in force which made a defendant, or the wife or husband of a defendant, competent to give evidence; it seems that all these Acts are superseded by the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), and are now unnecessary, so far as they relate to the subject-matter of that Act (see *Charnock* v. *Merchant*, [1900] 1 Q. B. 474; Stephen, Digest of the Law of Evidence, 6th ed., p. 124; Taylor on Evidence, 10th ed., Vol. II., p. 977; *R.* v. *Ellis* (1899), 34 L. J. 646; *R.* v. *Dunning* (1899), 34 L. J. 33; *R.* v. *Brazil* (1899), 63 J. P. 138). The Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), subject to the provisions of the Evidence Act, 1877 (40 & 41 Vict. c. 14), is the governing Act as regards the evidence of defendants and wives or husbands of defendants (see Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 6 (1)), and even subsequent Acts containing provisions relating to the same subject-matter must, unless they contain words expressly varying the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), be construed subject to

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he cannot, therefore, be compelled against his will to give evidence for a co-defendant.

Statutory rules as to evidence of defendant.

774. The defendant gives his evidence like other witnesses on oath or affirmation, and, unless otherwise ordered by the court, from the witness-box or other place from which the other witnesses give their evidence (*c*). He is not, however, treated altogether as an ordinary witness or as a person who might naturally be expected to be called as a witness (*d*).

If a defendant has given evidence in his own behalf which is not adverse to a co-defendant, and a co-defendant examines him in his own defence, the defendant who gives evidence becomes a witness for the co-defendant who examines him (*e*).

Cross-examination as to character etc.

If a defendant gives evidence on his own behalf, it is no objection to a question put to him in cross-examination that it may tend to criminate him as to the offence charged (*f*) ; but he must not be asked, and if asked cannot be required to answer, any question tending to show that he has committed or been convicted of or charged with any offence other than that with which he is then charged or that he is of bad character, (1) unless the proof that he has committed or been convicted of such other offence is admissible to show that he is guilty of the offence with which he is then charged (*g*) ; or (2) unless he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character; or (3) unless the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of the witnesses for the prosecution (*h*); or (4) unless

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that Act. See as to the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), and the Children Act, 1908 (8 Edw. 7, c. 67), p. 403, *ante*. The Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), does not apply to courts-martial, unless so applied by general orders or rules, see *ibid.*, s. 6. A defendant cannot give evidence before the grand jury (*R* v. *Rhodes*, [1899] 1 Q. B. 77, C. C. R. ; *R.* v. *Saunders* (1898), 63 J. P. 24). If a defendant pleads guilty, he cannot afterwards give evidence on his own behalf with a view to mitigation of punishment (*R.* v. *Hodgkinson* (1900), 64 J. P. 808). A prisoner ought to be distinctly told that he has a right to give evidence on his own behalf (*R.* v. *Warren* (1909), 25 T. L. R. 633, C. C. A.).

(*c*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (g).

(*d*) See p. 368, *ante*.

(*e*) See *R.* v. *Burditt* (1855), 6 Cox, C. C. 458, C. C. R., at p. 460; *R.* v. *Hadwen*, [1902] 1 K. B. 882, C. C. R., at p. 886.

(*f*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (e).

(*g*) See p. 380, *ante*.

(*h*) *E.g.*, such an imputation is involved if the defendant states on oath that one of the witnesses for the prosecution committed the offence with which he is charged (*R.* v. *Marshall* (1899), 63 J. P. 36), or suggests that the prosecutrix is a "drunken wastrel" (*R.* v. *Holmes, Times*, 31st January, 1899, p. 11), or that the prosecutrix on a charge of attempted rape consented to the acts which form the basis of the charge (*R.* v. *Fisher, Times*, 31st January, 1899, p. 11, which was, however, dissented from in *R.* v. *Sheehan* (1908), 72 J. P. 232, which see). Such an imputation is not involved, if the defendant merely states that the evidence given by the prosecutor is a lie and that the prosecutor is a liar (*R.* v. *Rouse*, [1904] 1 K. B. 184, C. C. R.), or if the defendant suggests that he was employed as an informer by a detective who was a witness for the prosecution (*R.* v.

he has given evidence against any other person charged with the same offence (*i*).

SECT. 3. Competency of Witnesses in Criminal Proceedings.

SUB-SECT. 3.—*Evidence of Wife or Husband of Defendant.*

Wife or husband of defendant.

775. At common law (*k*) the wife or husband of a defendant cannot give evidence for the prosecution or for the defence on the trial of the defendant, except in cases of offences committed by the defendant against the person or liberty of the other party to the marriage, and in such cases the wife or husband of the defendant can be compelled to give evidence for the prosecution without the consent of the other party to the marriage (*l*).

When a competent witness at common law.

According to the weight of authority, this exception does not apply to cases of treason (*m*).

Bridgwater, [1905] 1 K. B. 131, C. C. R.). See *R.* v. *Preston* [1909], 1 K. B. 568, C. C. A., where a prisoner in giving evidence made an allegation against a witness for the prosecution, but the making of such an imputation was not the substance of the defence or part of the nature or conduct of the defence, and it was held that the making of such an imputation did not let in evidence as to the prisoner's bad character.

(*i*) If such questions are asked in circumstances that do not come within the specified exceptions, and the defendant is convicted, the conviction is bad and will be set aside (*Charnock* v. *Merchant*, [1900] 1 Q. B. 474; *R.* v. *Rouse*, [1904] 1 K. B. 184, C. C. R.; *R.* v. *Bridgwater*, *supra*).

(*k*) As to the statutory modifications of the common law rule, see p. 406, *post*.

(*l*) 2 Hawk. P. C., 8th ed., c. 46, ss. 67—79; 1 Hale, P. C. 301; *R.* v. *Azire* (1725), 1 Stra. 633 (assault); *R.* v. *Pearce* (1840), 9 C. & P. at p. 668 (shooting with intent to murder); *R.* v. *Jellyman* (1838), 8 C. & P. 604 (committing an unnatural offence); *Lord Audley's Case* (1631), 3 State Tr. 401 (rape by aiding another person to ravish the defendant's wife); where a woman has been abducted and forced to marry the abductor, the woman can give evidence against the abductor when charged with abduction, the reason being that the marriage is null (*R.* v. *Wakefield* (1827), 2 Lew. C. C. 279); *aliter*, if the woman has after being abducted consented to the marriage voluntarily, or if a forced marriage has been ratified by voluntary cohabitation (1 Hale, P. C. 302, 661). It seems that if a marriage is brought about by fraudulent misrepresentations, and the husband or wife is on his or her trial for a charge based on these representations, the wife or husband cannot give evidence against the defendant (*R.* v. *Serjeant* (1826), Ry. & M. 352); but see *R.* v. *Perry* (1794), 2 Hawk. P. C. 601. *Quære*, whether the proper rule is that such evidence could be given, if the representations are of such a nature as to make the marriage void (see *Moss* v. *Moss*, [1897] P. 263).

In a prosecution for bigamy the true wife or husband of the defendant cannot be called as a witness (1 Hale, P. C. 693; *R.* v. *Griggs* (1660), T. Raym. 1; *R.* v. *Peat* (1838), 2 Lew. C. C. 288); but the false wife or husband can give evidence (1 Hale, P. C. 693; and see *R.* v. *Young* (1847), 2 Cox, C. C. 291). Nothing in the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), affects the case where the wife or husband of a person charged with an offence can be called at common law as a witness without the consent of the person charged (s. 4 (2)). The dying declarations of a wife or husband are admissible as evidence against the husband or wife when charged with the murder or manslaughter of the person who made the declaration (*R.* v. *Woodcock* (1789), 1 Leach, 500; *R.* v. *Johns* (1790), 1 Leach, 504, n.).

(*m*) *Anon.* (1613), 1 Brownl. 47; 1 Hale, P. C. 301. But in 2 Hawk. P. C., c. 46, s. 79, and Bac. Abr. tit. Evidence, A, p. 205, the point is treated as unsettled. See 1 Chitty, Criminal Law, 595; Taylor on Evidence, 10th ed., Vol. II., 976; but see *R.* v. *Griggs* (1661), T. Raym. 1; Buller, Nisi Prius, 286; Gilbert on Evidence, 6th ed., 119. There is no instance traceable of the wife having given evidence against the husband on a charge of treason (McNally, Evidence, Vol. I., 181).

SECT. 3. Competency of Witnesses in Criminal Proceedings.

In all cases where a wife or a husband is a competent witness for the prosecution against the other party to the marriage, the wife or husband is a competent witness for the defence (*n*).

If more persons than one are indicted and tried together, no wife or husband of any defendant can at common law (*o*) give evidence either for or against any defendant, except in the cases just mentioned and in cases in which the defendant who is the husband or wife of the witness tendered can give evidence (*p*).

When wife or husband of defendant may give evidence for prosecution.

776. The wife or husband of a defendant is a competent and compellable witness either for the prosecution or for the defence on the trial of indictments relating to the non-repair of highways etc. (*q*).

The wife or husband of a person charged with certain offences (*r*) may be called as a witness either for the prosecution or for the defence and without the consent of the person charged (*a*).

The effect of this enactment does not seem to be to make the wife or husband of the party charged with the specified offences a compellable witness either for the prosecution or for the defence (*b*).

(*n*) *R.* v. *Serjeant* (1826), Ry. & M., *per* ABBOTT, C.J., at p. 354.

(*o*) For the statutory modifications of the common law rule, see *infra*.

(*p*) See p. 402, *ante*; *R.* v. *Locker* (1804), 5 Esp. 107; *R.* v. *Williams* (1838), 8 C. & P. 284; *R.* v. *Thompson* (1863), 3 F. & F. 824. In *R.* v. *Pamenter* (1872), 12 Cox, C. C. 177, KELLY, C.B., refused to admit as evidence against a defendant a letter written by him to his wife while he was in custody and detained by a constable to whom the defendant had given it to post. The ground of the rejection of this letter was that it belonged to the wife, and that she could not have been called upon to produce it, if it had reached her hands. This ruling would be inapplicable now in those cases where the wife or husband of a defendant is a compellable witness (see *infra*), but would be applicable to all cases where the wife or husband is not compellable.

(*q*) Evidence Act, 1877 (40 & 41 Vict. c. 14).

(*r*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1.

(*a*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 4 (1), and schedule; Children Act, 1908 (8 Edw. 7, c. 67), s. 27, and first schedule. The offences are the offences under the Vagrancy Act, 1824 (5 Geo. 4, c. 83), of a man neglecting to maintain or deserting his wife or any of his family; any offence under the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 12, 16; under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69); under the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 27 (exposing children), s. 48 (rape), ss. 53, 54, 55 (abduction of women and girls), or s. 56 (child stealing); any offence against a person under sixteen under the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 5 (manslaughter), s. 42 (common assault), s. 43 (aggravated assault), s. 52 (indecent assault etc.), or s. 62 (attempt to commit an infamous crime); any offence under the Dangerous Performances Acts, 1879 and 1887 (42 & 43 Vict. c. 34; 60 & 61 Vict. c. 52); and any other offence involving bodily injury to a person under sixteen (see Children Act, 1908 (8 Edw. 7, c. 67), Sched. I., and s. 27); any offence under the Children Act, 1908 (8 Edw. 7, c. 67), Part II. (see p. 408, *post*).

(*b*) In *R.* v. *Ellis* (1899), 34 L. J. 646, and *R.* v. *Dunning* (1899), 34 L. J. 33 (charges under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69)), the wife was treated as a compellable witness; in *R.* v. *Brazil* (1899), 63 J. P. 138 (a charge under the same Act), the wife objected to give evidence against her husband, and her objection was allowed. It is immaterial whether the marriage has taken place before or after the offence charged (*R.* v. *Brazil*, *supra*).

777. In any proceeding against any person under the Prevention of Cruelty to Children Act, 1904 (*c*), the wife or husband of the person accused may be required to attend as an ordinary witness in the case, and is competent, but not compellable, to give evidence—*i.e.*, it seems either for the prosecution or for the defence (*d*).

Wife or husband of defendant as witness for defence.

778. It is further provided by statute (*e*) that in all criminal proceedings (*f*) the wife or husband of every person charged with an offence is a competent witness for the defence at every stage of the proceedings, but cannot, except in certain specified cases (*g*), be called as a witness, except upon the application of the person charged who is the husband or wife of the proposed witness (*h*).

Statutory rules as to evidence of wife or husband of defendant.

The provisions of the statute do not render a husband compellable to disclose any communication made to him by his wife during the marriage or a wife compellable to disclose a communication so made to her by her husband (*i*).

A husband or wife who gives evidence under the provisions of the statute may be cross-examined as to his or her previous offences or as to his or her character (*k*).

The failure of the wife or husband of the person charged to give evidence must not, any more than the failure of the person charged to give evidence, be made the subject of any comment by the prosecution (*l*).

(*c*) 4 Edw. 7, c. 15, s. 12; and see Children Act, 1908 (8 Edw. 7, c. 67), and Third Schedule.

(*d*) The words "may be required to attend to give evidence as an ordinary witness in the case" seem to contemplate the wife or husband giving evidence for the prosecution. The effect seems to be to alter, in respect of the offences in question, s. 1 (c) of the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), and to make it possible to call the wife or husband of the defendant without the application of the defendant, but the other words of the section give the witness the option of refusing to give evidence. It seems that s. 12 of the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), cannot justify the binding over of the wife or husband by recognisance to give evidence, as that is a species of compulsion. *Quære*, whether the words quoted above refer to the process by *subpœna*. The Act seems to provide for the wife or husband giving evidence for the defence, but this would appear to have been unnecessary, as it was already provided for by the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (see *infra*).

(*e*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36).

(*f*) Nothing in the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), is to affect the Evidence Act, 1877 (40 & 41 Vict. c. 14); see p. 406, *ante*.

(*g*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 4 (1), and Criminal Evidence Act, 1877 (40 & 41 Vict. c. 14) (see p. 406, *ante*).

(*h*) *Ibid.*, s. 1. The effect of the exception is that a co-defendant cannot call the wife or husband of another co-defendant as a witness, unless the husband or wife who is a co-defendant applies that his or her wife or husband should be called. The object of the exception is to prevent a wife or husband giving, without the husband or wife's consent, evidence which may have the effect of inculpating the husband or wife. It seems that, if the wife or husband of a co-defendant is called as a witness and gives evidence adverse to another co-defendant, such co-defendant has the right to cross-examine the person so called (*R.* v. *Hadwen*, [1902] 1 K. B. 882, C. C. R.).

(*i*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (d).

(*k*) The provisions of the Act which prohibit, with certain reservations, cross-examination as to previous offences, or as to character apply only to the person charged (*ibid.*, s. 1 (e), (f)).

(*l*) *Ibid.*, s. 1 (b).

SECT. 3. Competency of Witnesses in Criminal Proceedings.

SUB-SECT. 4.—*Evidence of Children.*

Evidence not on oath.

779. In criminal proceedings there is a limited class of cases in which a witness can give evidence not on oath or affirmation.

In a charge for certain offences under the Children Act, 1908 (*m*), if the child in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not in the opinion of the court or justices understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if in the opinion of the court or justices such child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; but no person can be convicted on such unsworn evidence, unless it is corroborated by some other material evidence in support thereof implicating the accused (*n*).

There are similar provisions as to the taking of unsworn evidence when a person is charged with an offence under the Prevention of Cruelty to Children Act, 1904 (*o*).

SUB-SECT. 5.—*Evidence of Accomplices.*

780. There is no absolute rule of law that the evidence of an accomplice must be corroborated, but there is a well-established rule of practice by which judges advise juries not to convict a prisoner, except in very special circumstances, on such evidence, when uncorroborated (*p*).

(*m*) 8 Edw. 7, c. 67. The offences are those under Part II. of the Act and those mentioned in the First Schedule of the Act. For the offences under Part II. of the Act, see s. 12 (cruelty to children and young persons), s. 16 (allowing children or young persons to reside in or to frequent a brothel), and s. 17 (encouraging the seduction or prostitution of a young girl). The offences mentioned in the First Schedule of the Act are—(1) any offence under the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 27 (exposing children), s. 55 (abduction of girls), and s. 56 (child stealing); (2) any offence against a person under sixteen under the following sections of that Act: s. 5 (manslaughter), s. 42 (common assault), s. 43 (aggravated assault), s. 52 (indecent assault), or s. 62 (attempt to commit an infamous crime); (3) any offence under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69); (4) any offence under the Dangerous Performances Acts, 1879 and 1897 (42 & 43 Vict. c. 34; 60 & 61 Vict. c. 52); or (5) any other offence involving bodily injury to a person under sixteen.

(*n*) Children Act, 1908 (8 Edw. 7, c. 67), s. 30 (repealing part of s. 4 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69); see *R.* v. *Wealand* (1888), 20 Q. B. D. 827, C. C. R.; *R.* v. *Owen* (1888), 20 Q. B. D. 829, C. C. R.; and *R.* v. *Paul* (1890), 25 Q. B. D. 202, C. C. R., decided under the repealed part of s. 4 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69). If unsworn evidence is given before justices under the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), or the Children Act, 1908 (8 Edw. 7, c. 67), and the deposition is taken down in writing, and if the witness at the time of the trial is dead or too ill to travel, the deposition can be given in evidence under the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17 (see Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 15; Children Act, 1908 (8 Edw. 7, c. 67), s. 30. The decision in *R.* v. *Pruntey* (1888), 16 Cox, C. C. 344, which was decided under the repealed part of s. 4 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), is no longer applicable.

(*o*) 4 Edw. 7, c. 15 (see s. 15, and Children Act, 1908 (8 Edw. 7, c. 67), Third Schedule).

(*p*) *R.* v. *Tate* (1908), 1 Cr. App. Rep. 39. A verdict obtained on the uncor-

Part VII.—Punishment and Prevention of Crime.

SECT. 1.—*Punishment in General* (*a*).

SUB-SECT. 1.—*Kinds of Punishment.*

SECT. 1. Punishment in General.

Death.

781. Judgment of death can only be awarded for murder (*b*), treason (*c*), piracy (*d*), or setting fire to the King's ships or arsenals etc. (*e*). It cannot be pronounced on, or recorded against, anyone under the age of sixteen (*f*).

When a person above sixteen is convicted of murder or treason, judgment of death must be pronounced; but in cases of piracy and setting fire to the King's ships it may be merely recorded (*g*).

In the cases of crimes other than the four last mentioned. the court has a discretion within certain limits in fixing the punishment (*h*).

Penal servitude.

782. Penal servitude is a form of punishment (*i*) which can only be imposed when a statute authorises its imposition (*k*). The shortest sentence of penal servitude that can be passed is for three years. A person convicted of any felony for which no

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roborated evidence of an accomplice alone is liable to be upset by the Court of Criminal Appeal; see *R.* v. *Barrett* (1908), 1 Cr. App. Rep. 64; *R.* v. *Jacobs* (1908), 1 Cr. App. Rep. 216; *R.* v. *Warner* (1908), 1 Cr. App. Rep. 227; *R.* v. *Stubbs* (1855), 25 L. J. (M. C.) 16; *R.* v. *Boyes* (1861), 1 B. & S. 311; *R.* v. *Thistlewood* (1820), 33 State Tr. 921. See also p. 388, *ante*, and cases cited in note (*o*) thereon.

(*a*) In addition to the punishments mentioned many statutes (24 Hen. 8, c. 12, s. 2; 25 Hen. 8, c. 19; 25 Hen. 8, c. 20, s. 6; 21 Jac. 1, c. 3, s. 4; 12 Car. 2, c. 24, s. 12; 13 Car. 2, stat. 1, c. 1, s. 3; Habeas Corpus Act, 1679 (31 Car. 2, c. 2), s. 11; Succession to the Crown Act, 1707 (6 Ann. c. 41), s. 2; Scottish Representative Peers Act, 1707 (6 Ann. c. 78), s. 4; Royal Marriages Act, 1772 (12 Geo. 3, c. 11), s. 9) prescribe for certain offences the penalties imposed by the (1393) statute of *præmunire* (16 Ric. 2, c. 5), *i.e.*, imprisonment for life and confiscation of property, but these penalties, although referred to in the Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1, are now obsolete; see note to *R.* v. *Crook* (1662), 6 State Tr. 201, 210.

(*b*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 2.

(*c*) Treason Act, 1814 (54 Geo. 3, c. 146), s. 1.

(*d*) Piracy Act, 1837 (7 Will. 4 & 1 Vict. c. 88).

(*e*) Dockyards etc. Protection Act, 1772 (12 Geo. 3, c. 24), s. 1.

(*f*) Children Act, 1908 (8 Edw. 7, c. 67), ss. 103, 131.

(*g*) Judgment of Death Act, 1823 (4 Geo. 4, c. 48); see Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 2, and Treason Act, 1814 (54 Geo. 3, c. 146), s. 1.

(*h*) For the punishments fixed for each offence, see *post*, under the heading of each offence. As to the matters to be considered in sentencing a prisoner, see *R.* v. *Syres* (1908), 73 J. P. 13, and *R.* v. *Kirkpatrick* (1908), 73 J. P. 29, C. C. A.; and p. 425, *post*.

(*i*) It was substituted for transportation by the Penal Servitude Act, 1853 (16 & 17 Vict. c. 99) ss. 5, 6, 7; see Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), ss. 2, 3; Penal Servitude Act, 1864 (27 & 28 Vict. c. 47); and Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The Acts applicable to transportation are extended so as to be applicable to penal servitude (Penal Servitude Act, 1853 (16 & 17 Vict. c. 99), s. 7; and see s. 14).

(*k*) Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

SECT. 1. Punishment in General.

punishment is specially provided is liable to a sentence of penal servitude for not more than seven or less than three years, or to a sentence of imprisonment for not more than two years (*l*).

As regards all sentences of penal servitude authorised by any Act before 5th August, 1891, the court may award a sentence of penal servitude for any period not less than three years and not exceeding five years, or any longer period fixed by the particular Act. An alternative sentence of imprisonment for a term not exceeding two years may be passed instead of penal servitude, when penal servitude is authorised by any Act, unless there is provision to the contrary in any Act passed after 5th August, 1891 (*m*).

Imprisonment without hard labour.

783. Imprisonment without hard labour (with or without a fine) is the common law punishment for a common law misdemeanour, and is a statutory punishment for some kinds of felony or misdemeanour.

Where imprisonment is a punishment allowable by common law, there is no limit fixed for the period of imprisonment (*n*).

In most cases where imprisonment without hard labour is allowable by statute the maximum period of imprisonment is for two years (*a*).

Persons who are sentenced to imprisonment without hard labour may be divided into three divisions. The court that passes the sentence may, if it thinks fit, having regard to the nature of the offence and the antecedents of the offender, direct that he be treated as an offender of the first division or as an offender of the second division ; if no direction is given by the court, he is to be treated as an offender of the third division (*b*).

With hard labour.

784. Imprisonment with hard labour is a punishment which can only be imposed when authorised by statute (*c*). The maximum period is generally two years (*d*).

(*l*) Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 8; Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), s. 2.

(*m*) Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*n*) *R.* v. *Castro* (1880), 5 Q. B. D. 490, C. A., *per* BRAMWELL, L.J., at p. 509. Imprisonment without hard labour with or without a fine was substituted for the pillory by the Pillory Abolition Act, 1816 (56 Geo. 3, c. 138), s. 2; no limit of the term of imprisonment is fixed by that statute.

(*a*) See Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. A sentence of three years' imprisonment without hard labour may, it seems, still be passed *e.g.*, for a second conviction for blasphemy (stat. (1697-8) 9 Will. 3, c. 35); a sentence of three years' imprisonment with or without hard labour may also be passed for threatening to publish a libel with intent to extort money (Libel Act, 1843 (6 & 7 Vict. c. 96), s. 3). If a statute authorises imprisonment, but does not specify any term, there is no limit to the period.

(*b*) Prison Act, 1898 (61 & 62 Vict. c. 41), s. 6 (1) (2). See *R.* v. *Harris* (1909), 2 Cr. App. Rep. 50. A prisoner sentenced to imprisonment for sedition or seditious libel is always to be treated as an offender of the first division (Prison Act, 1877 (40 & 41 Vict. c. 21), s. 40; Prison Act, 1898 (61 & 62 Vict. c. 41), s. 6 (5)). As to the treatment of persons in the three divisions, see Local Prison Rules, 1899, Parts III., IV., V. (Statutory Rules and Orders Revised, Vol. X., Prisons, England, pp. 60 *et seq.*, No. 322), and title PRISONS.

(*c*) See Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1; Hard Labour Act, 1822 (3 Geo. 4, c. 114) ; Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29.

(*d*) Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. But imprisonment

Sentences on several charges.

785. A person sentenced on several charges, whether on separate indictments or on different counts in one indictment, may be sentenced to more terms than one of penal servitude or imprisonment, and these terms may either run concurrently with one another or may be consecutive, so that one commences on the expiration of another (*e*).

Punishment after previous conviction.

786. In certain cases where an offence has been committed after a previous conviction, the judge may, in his discretion, in addition to any other punishment which is inflicted on the offender, make an order that he should be kept under police supervision for any period not exceeding seven years (*f*).

Whipping.

787. Whipping is a common law punishment for a misdemeanour, but is rarely now inflicted as a punishment except under statutory authority. It has been abolished as a punishment for females (*g*).

The whipping of adult males in addition to or instead of any other punishment is authorised by statute—(1) in the case of incorrigible rogues sentenced at quarter sessions (*h*); (2) in the case of persons who are convicted of discharging firearms or explosive substances at the Sovereign (*i*); (3) in the case of persons convicted of the offence of robbery with violence, or of the offence of robbery or assault with intent to rob whilst armed with an offensive weapon or instrument (*k*); (4) in the case of persons convicted of the offence of attempting to choke, suffocate, or strangle anyone, or of using means calculated to do so with intent to commit or to enable any other person to commit an indictable offence (*l*).

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with hard labour for three years is, it seems, possible under the Libel Act, 1843 (6 & 7 Vict. c. 96), s. 3. See, too, pp. 506, note (*h*), 523, *post*.

(*e*) *R.* v. *Wilkes* (1770), 19 State Tr. 1075, 1132; *Castro* v. *R.* (1881), 6 App. Cas. 229. A sentence of hard labour concurrent with a sentence of penal servitude is undesirable, as the sentence of hard labour makes it more difficult for the prisoner to earn a remission of his sentence of penal servitude (*R.* v. *Martin* (1908), 1 Cr. App. Rep. 209). But if a person who has been sentenced to penal servitude is released on ticket-of-leave and is afterwards convicted of another crime, he must serve the rest of his original sentence after the expiration of the second, and the remnant of the original sentence cannot be made to run concurrently with the new one (*R.* v. *King*, [1897] 1 Q. B. 214. C. C. R., *per* HAWKINS, J., at p. 218; *R.* v. *Hamilton* (1908), 1 Cr. App. Rep. 87). It has been said that as a general rule it is not desirable that a sentence of penal servitude should follow on one of imprisonment with hard labour (*R.* v. *Jones* (1908), 1 Cr. App. Rep. 196).

(*f*) Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 8; Prevention of Crime Act, 1879 (42 & 43 Vict. c. 55), s. 2; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 4; and see p. 414, *post*.

(*g*) See Whipping Act, 1820 (1 Geo. 4, c. 57).

(*h*) Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 10.

(*i*) Treason Act, 1842 (5 & 6 Vict. c. 51), s. 2.

(*k*) See Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 43.

(*l*) See Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 21, and Garrotters Act, 1863 (26 & 27 Vict. c. 44), s. 1. In *R.* v. *Smallbone* (1898), 33 L. J. 124, a person convicted of attempting to choke a woman with intent to commit a rape on her was sentenced at the Hampshire Assizes to two whippings and seven years' penal servitude. As regards whipping under the Garrotters Act, 1863 (26 & 27 Vict. c. 44), in the case of an offender under sixteen the number of strokes is not to exceed twenty-five at each whipping, and the instrument used

SECT. 1. Punishment in General.

Fine.

788. A fine, either with or without imprisonment, is a punishment for a common law misdemeanour. It is also a statutory punishment, which may in certain cases (*m*) be inflicted with or instead of imprisonment. A fine is rarely imposed except under a statute.

Order for abatement of nuisance.

789. If a defendant has been convicted on indictment for causing a nuisance, an order may be made by the court for the abatement of the nuisance, if it is alleged to be a continuing nuisance and is proved to be still continuing at the date of the judgment (*n*).

SUB-SECT. 2.—*Recognisances to keep the Peace.*

Recognisances.

790. A person who has been convicted of any felony (except murder) under the Criminal Law Consolidation Acts (*o*) may be ordered, in addition to any other punishment, to enter into his own recognisances, with or without sureties, to keep the peace, and on failure to find sureties may be imprisoned for not more than a year (*o*).

A person who has been convicted of any indictable misdemeanour under the Criminal Law Consolidation Acts (*o*) may, in addition to or in substitution for any other punishment, be ordered to enter into his own recognisances and to find sureties for keeping the peace and being of good behaviour, and on failure to find sureties may be imprisoned for not more than a year (*p*).

A person convicted of any other indictable misdemeanour, whether at common law or by statute, may be ordered, in addition to or substitution for any other punishment, to enter into a recognisance, with or without sureties, to keep the peace and be of good behaviour

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is to be a birch-rod; in the case of any other male offender the number of strokes is not to exceed fifty at each such whipping. In each case the court is to specify the number of strokes to be inflicted and the instrument to be used (*ibid.*). Whipping is also authorised in certain cases tried before courts of summary jurisdiction; see title MAGISTRATES. As to the whipping of offenders under sixteen, see p. 423, *post*.

(*m*) See the Criminal Law Consolidation Acts (*i.e.*, Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 38; Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 51; Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 117; Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 73; Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 71); Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 4; Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 2; Children Act, 1908 (8 Edw. 7, c. 67), s. 12. There was no limit to the amount of a fine at common law except the provisions of Magna Carta (25 Edw. 1, s. 14) and the Bill of Rights (1 Will. & Mar. sess. 2, c. 2) against unreasonable fines. Some of the statutes which authorise the imposition of a fine fix a maximum limit, *e.g.*, the Gaming Act, 1845 (8 & 9 Vict. c. 109), the Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 2, and the Children Act, 1908 (8 Edw. 7, c. 67), ss. 9 and 12. Other statutes (*e.g.*, the Criminal Law Consolidation Acts; see *ante*) which authorise the imposition of a fine fix no limit.

(*n*) *R.* v. *West Riding of Yorks Justices* (1798), 7 Term Rep. 467; *R.* v. *Stead* (1799), 8 Term Rep. 142; *R.* v. *Incledon* (1810), 13 East, 164.

(*o*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 38; Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 51; Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 117; Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 73; Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s 71.

(*p*) *Ibid.*

for a reasonable time to be specified in the order, and to be imprisoned until the recognisances are entered into (*q*).

If the conditions of such recognisances are broken, the recognisances may be estreated (*r*).

In the case of any offence except one punishable by death the court may, instead of passing sentence, require a person who has been convicted to enter into recognisances, with or without sureties, to come up for judgment when called upon. Such recognisances may also contain a condition that the convicted person should in the meantime keep the peace and be of good behaviour (*s*).

Probation of Offenders Act, 1907.

791. When any person has been convicted on indictment of any offence punishable with imprisonment, and the court is of opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, in lieu of imposing a sentence of imprisonment, make an order discharging the offender conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour, and to appear for sentence when called on at any time during such period not exceeding three years, as may be specified in the order (*a*). The court may also order the offender to pay such damages for injury or compensation for loss and to pay such costs of the proceedings as the court thinks reasonable (*b*).

Order for conditional discharge of person convicted.

Conditions.

Where an offender is ordered by the court to enter into such recognisances, they may contain a condition that the offender is to be under the supervision of a person named in the order for a period therein specified and such other conditions for securing such supervision as may be specified in the order.

There may also be inserted in such a recognisance additional conditions (1) prohibiting the offender from associating with thieves and other undesirable persons and from frequenting undesirable places; or (2), where the offence was committed under the influence of drink, requiring the offender to abstain from intoxicating liquor (*c*); and (3) generally for securing that the offender should lead an honest and industrious life (*d*).

(*q*) *R.* v. *Dunn* (1847), 12 Q. B. 1026, 1041, n.

(*r*) Crown Office Rules, 1906, r. 115; see Fines Act, 1833 (3 & 4 Will. 4, c. 99), ss. 26, 27, 28.

(*s*) This course may be pursued if a case is stated under the Crown Cases Act, 1848 (11 & 12 Vict. c. 78) (see s. 1); or in the case of an appeal under the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), or in any other case where the court may think it expedient (*Burgess* v. *Boetefleur* (1844), 7 Man. & G. 481; *R.* v. *Miles* (1890), 24 Q. B. D. 423, C. C. R.; Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), s. 1 (2)). As to deportation of alien criminals, see p. 418, *post*.

(*a*) Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), s. 1 (2).

(*b*) *Ibid.*, s. 1 (3).

(*c*) See *R.* v. *Davies*, [1909] 1 K. B. 892, C. C. A.

(*d*) Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), s. 2. As to the

SECT. 1. Punishment in General.

Security of the peace.

792. If a person has just cause to fear that another will do him some bodily harm, as by killing or beating him or his wife or child, he may demand the surety of the peace against such person, and it is the duty of a justice of the peace to bind over such person, if the applicant proves on oath that he is actually under such fear and has just cause to be so (*e*).

Binding a person over to keep the peace is not in strictness a punishment, but is a measure taken to prevent the apprehended danger of a breach of the peace.

Proceedings for this purpose are generally taken before justices, but an application may also be made by exhibiting articles of the peace in the King's Bench Division of the High Court of Justice (*f*).

Good behaviour.

793. A person may also be bound over by justices or by the High Court of Justice to be of good behaviour, and this may be done by the justices of their own motion or on the complaint of others. A recognisance to be of good behaviour is more comprehensive than a recognisance to keep the peace, and a person may be bound over to be of good behaviour, to prevent an apprehended offence; it is not necessary in such a case for the applicant to swear that he goes in fear of the person against whom the application is made (*g*).

Forfeiture of recognisances.

794. If anyone fails to satisfy the condition of a recognisance, it may be estreated (*h*). The effect of the estreat is that the sheriff enforces the forfeiture by levying the amount of the recognisance on the goods and chattels of the recognisor, and if sufficient goods and chattels cannot be found, by seizing his body (*i*).

The court may also discharge or enlarge a recognisance (*a*).

SUB-SECT. 3.—*Police Supervision.*

Notification of residence.

795. A person who has been sentenced to police supervision, and is at large in Great Britain or Ireland, must notify the place of his residence to the chief officer of police of the district in which his residence is situated, and whenever he removes to another residence within the same police district, must notify his change of residence to such chief officer, and if he is about to leave a police district, he must notify his intention to the chief officer of police of that district and must state the place to

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appointment and the duties of probation officers, see ss. 3 and 4; and as to the punishment of the offender, if he fails to observe the conditions of his release, see s. 6.

(*e*) 1 Hawk. P. C., 8th ed., c. 28, s. 2; Burn's Justice, 30th ed., Vol. V., 743; see also title MAGISTRATES.

(*f*) Crown Office Rules, 1906, rr. 246—256. A peer or peeress can only be bound over for this purpose in the High Court (Short and Mellor, Practice of the Crown Office, 2nd ed., 377).

(*g*) See Burn's Justice, 30th ed., Vol. V., 754; *R.* v. *Wilkins*, [1907] 2 K. B. 380; Stone's Justices' Manual, 40th ed., 1121; see also title MAGISTRATES.

(*h*) Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 31.

(*i*) See Levy of Fines Act, 1822 (3 Geo. 4, c. 46), s. 2; Fines Act, 1833 (3 & 4 Will. 4, c. 99), ss. 29—35.

(*a*) *R.* v. *Doyen* (1899), 34 L. J. 645; *R.* v. *Sangiovanni* (1904), 68 J. P. 54.

which he is going, and, if it is required and is practicable, his address at that place, and whenever he arrives in any police district, he must forthwith notify his place of residence to the chief officer of police of that district (*b*).

Reports.

Every male person subject to such supervision is once in every month to report himself, at such time as may be prescribed by the chief officer of police of the district in which he may be, either to the chief officer himself or to such other person as the chief officer may direct. The report may be made personally or by letter (*b*).

Failure to notify.

Any person subject to the supervision of the police who fails to comply with these provisions is guilty of an offence (*b*), and unless he proves either that being on a journey he tarried no longer in the place where it was necessary to notify his place of residence than was reasonably necessary, or that he did his best to act in conformity with the law, he is liable, on conviction therefor by a court of summary jurisdiction, to a sentence of imprisonment, with or without hard labour, for not more than one year (*c*).

Licence to be at large.

There are similar provisions with regard to a person sentenced to penal servitude who has been granted a licence to be at large (*d*).

SECT. 2.—*Punishment of Special Classes of Offenders.*

SUB-SECT. 1.—*Habitual Criminals.*

Habitual criminal.

796. A person convicted on an indictment charging him with one of certain specified crimes (*e*) and also with being a habitual criminal may be sentenced to preventive detention as an additional punishment (*f*).

A habitual criminal for the purposes of the statute means a person who, after attaining the age of sixteen, has been proved to have been at least three times convicted of one of the specified crimes previously to the conviction for the crime charged in the indictment, and to be leading persistently a dishonest or criminal life, or a person who on such a previous conviction has been found to be a habitual criminal and sentenced to preventive detention (*g*).

(*b*) Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 8; Prevention of Crime Act, 1879 (42 & 43 Vict. c. 55), s. 2; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 4.

(*c*) Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), ss. 8, 17.

(*d*) Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 5; Prevention of Crime Act, 1879 (42 & 43 Vict. c. 55), s. 2; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 4.

(*e*) *I.e.*, any felony, uttering false or counterfeit coin, possession of counterfeit gold or silver coin, obtaining goods or money by false pretences, conspiracy to defraud, or any misdemeanour under the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 58 (Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10 (6) and schedule). The crime must have been committed after the 21st December, 1908 (*ibid.*, s. 10).

(*f*) Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10. This Act came into operation on the 1st August, 1909.

(*g*) Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10 (2). The crimes for

SECT. 2. Punishment of Special Classes of Offenders.

Sentence of preventive detention.

797. If a person is convicted on an indictment charging him with one of the specified crimes and also charging him with being a habitual criminal, and the jury find that he is guilty of these charges and the court passes upon him a sentence of penal servitude but is of opinion that by reason of his criminal habits and mode of life it is expedient for the protection of the public that he should be kept in detention for a lengthened period of years, the court may pass a further sentence that on the determination of the sentence of penal servitude he should be detained for such period, not exceeding ten nor less than five years, as the court may determine (*h*).

Power of Secretary of State.

798. If any person has been sentenced (*i*) to a term of penal servitude of not less than five years, the Secretary of State may, if such person appears to him to have been a habitual criminal, at any time after the expiration of three years of the term to which he has been sentenced commute the whole or part of the residue of the term to a sentence of preventive detention, but the total term of the sentence when so commuted must in that case not exceed the term of penal servitude originally awarded (*j*).

Effect of sentence of preventive detention.

When a sentence of preventive detention is added to a sentence of penal servitude, the sentence of preventive detention is to take effect immediately on the determination of the sentence of penal servitude, whether the sentence of penal servitude is determined by effluxion of time or at an earlier date by order of the Secretary of State (*k*).

The Secretary of State in making such order may have regard to

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which the accused has been previously convicted may be either committed before or after the passing of the Act (21st December, 1908). The indictment is sufficient if after charging the crime it states that the offender is a habitual criminal (*ibid.*, s. 10 (2), (3)). A charge of being a habitual criminal cannot be inserted in an indictment without the consent of the Director of Public Prosecutions, and unless not less than seven days' notice has been given to the proper officer of the court by which the offender is to be tried and to the offender that it is intended to insert such charge; the notice to the offender must specify the previous convictions and the other grounds upon which it is intended to found the charge (*ibid.*, s. 10 (4)). The offender is to be arraigned on the indictment in the same way as a person who is arraigned on an indictment which contains a count for a previous conviction (see pp. 353, 374, *ante*), *i.e.*, he is not to be arraigned on the part of the indictment charging him with being a habitual criminal until after he has pleaded guilty to the charge or the jury have found him guilty of the crime charged (*ibid.*, s. 10 (4)). Evidence as to character and repute may, if the court think fit, be admitted on the question whether the accused is or is not leading persistently a dishonest or criminal life; the accused may tender evidence as to his character and repute (*ibid.*, s. 10 (5)). The persistent leading of a dishonest or criminal life must be proved and is a more important part of the definition of a habitual criminal than the previous convictions (*R.* v. *Raybould* (1909), 2 Cr. App. Rep. 184. *Quære*, whether a conviction on three indictments found by the same grand jury amounts to three convictions within the meaning of s. 10 (2) (*R.* v. *Raybould*, *supra*).

(*h*) Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10. A person sentenced under this section to preventive detention may appeal against the sentence without the leave of the Court of Criminal Appeal (*ibid.*, s. 11; see p. 433, *post*).

(*i*) Either before or after the passing of the Act (*ibid.*, s. 12). *Quære* whether a sentence on two indictments of two consecutive terms of penal servitude, when each term is for less than five years, is a sentence of not less than five years (*R.* v. *Warner* (1909), 2 Cr. App. Rep. 177).

(*j*) *Ibid.*, s. 12.

(*k*) *Ibid.*, s. 13 (1).

the circumstances of the case, and particularly to the time at which the offender, if he had been sentenced to penal servitude alone, would ordinarily have been licensed to be at large (*l*).

Treatment of person undergoing preventive detention.

799. A person undergoing preventive detention is to be confined in any prison or part of a prison which the Secretary of State may set apart for that purpose, and, subject to the provisions of the statute, is to be subject to the law for the time being in force with regard to penal servitude, as if he were undergoing penal servitude (*m*); the rules applicable to convicts and convict prisons are to apply to a person undergoing preventive detention, and to the prison or part of a prison in which he is detained, with such modifications directing a less rigorous treatment as the Secretary of State may prescribe by prison rules (*n*).

Persons undergoing such detention are to be subjected to such disciplinary and reformative influences and are to be employed on such work as may be best fitted to make them able and willing to earn an honest livelihood on discharge (*o*).

SUB-SECT. 2.—*Habitual Drunkards.*

Inebriates Act, 1898.

800. If a person is convicted on indictment of an offence punishable with imprisonment or penal servitude, and the court is satisfied from the evidence that the offence was committed under the influence of drink or that drunkenness was a contributing cause of the offence, and the offender admits that he is, or is found by the jury to be, a habitual drunkard, the court may, in addition to or in substitution for any other sentence, order that he be detained for a term not exceeding three years in any State inebriate reformatory or in any certified inebriate reformatory the managers of which are willing to receive him (*p*).

A person who has been convicted on indictment of the offence of being a habitual drunkard may be sentenced to be detained for a term not exceeding three years in any certified reformatory the managers of which are willing to receive him (*q*).

(*l*) Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 13 (1).

(*m*) *Ibid.*, s. 13 (2).

(*n*) *Ibid.* As to prison rules, see Prison Act, 1898 (61 & 62 Vict. c. 41), s. 2; and see title PRISONS.

(*o*) Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 13 (3). Such persons may be discharged on probation on licence (s. 14), subject to provisions as to supervision (ss. 14, 15) and to revocation of licence and rearrest (s. 15), or may be discharged absolutely (s. 16).

(*p*) Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 1. "Habitual drunkard" means a person who, not being amenable to any jurisdiction in lunacy, is by reason of habitual intemperate drinking of intoxicating liquor at times dangerous to himself or herself or others or incapable of managing himself or herself and his or her affairs (Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19), s. 3). For an instance of a sentence under s. 1 of the Inebriates Act, 1898 (61 & 62 Vict. c. 60), see *R.* v. *Prince* (1908), 1 Cr. App. Rep. 252.

(*q*) Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 2. Detention in a reformatory is the only punishment which can be awarded under this section. A sentence of imprisonment in addition cannot be inflicted (*R.* v. *Briggs*, [1909] 1 K. B. 381, C. C. A.).

SECT. 2. Punishment of Special Classes of Offenders.

A habitual drunkard who has been convicted of certain offences (*r*) may, with his consent, instead of being sentenced to imprisonment be ordered to be detained (*s*) in a "retreat" (*t*) the licensee of which is willing to receive him for a period not exceeding two years (*u*).

SUB-SECT. 3.—*Deportation of Aliens.*

Expulsion of alien offenders.

801. If an alien has been convicted in this country of felony or misdemeanour or other offence for which the court has power to impose imprisonment without the option of a fine, the court may, in addition to or in lieu of his sentence, recommend to the Home Secretary that an order be made for the expulsion of such alien from the United Kingdom (*x*), and the Secretary of State may thereupon make such an order.

A similar order may be made (*y*), on the certificate of a court of summary jurisdiction, that an alien (1) has within three months been in the receipt of such parochial relief as disqualifies a person for the parliamentary franchise, or (2) has been found wandering without ostensible means of subsistence, or (3) has been living under insanitary conditions due to overcrowding, or (4), if he has entered England after 11th August, 1905, that he has been sentenced in a foreign country for an extradition crime (*a*).

SUB-SECT. 4.—*Young Offenders and Borstal Institutions.*

Prevention of Crime Act, 1908.

802. Borstal institutions are places in which young offenders (*i.e.*, persons of sixteen years of age and upwards, and not more than twenty-one) may be detained and given such industrial training and other instruction, and subjected to such disciplinary and moral influences, as will conduce to their reformation and the prevention of crime (*b*).

(*r*) Namely, any offence of cruelty within the meaning of the Children Act, 1908 (8 Edw. 7, c. 67), s. 12, to a person under the age of sixteen; any offence under the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 27, 55 or 56, or any offence against a person under the age of sixteen under the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 5, 42, 43, 52 or 62, or under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69); any offence under the Dangerous Performances Acts, 1879 and 1897 (42 & 43 Vict. c. 34, & 60 & 61 Vict. c. 52); any other offences involving bodily injury to a person under sixteen. See Children Act, 1908 (8 Edw. 7, c. 67), s. 26.

(*s*) *Ibid.*, s. 12.

(*t*) As to retreats, see Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19), ss. 6—12, and Inebriates Act, 1888 (51 & 52 Vict. c. 19), s. 4.

(*u*) Children Act, 1908 (8 Edw. 7, c. 67), s. 26. This section does not affect the power of the court to order him to be detained in a certified inebriate reformatory if he comes within the provisions of s. 1 of the Inebriates Act, 1898 (61 & 62 Vict. c. 60). As to the meaning of "habitual drunkard," see note (*p*) on p. 417, *ante*.

(*x*) Aliens Act, 1905 (5 Edw. 7, c. 13), s. 3 (1); see title ALIENS, Vol. I., p. 323.

(*y*) *Ibid.*, s. 3 (1) (b).

(*a*) As to what is an extradition crime, see Extradition Act, 1870 (33 & 34 Vict. c. 52), and title EXTRADITION AND FUGITIVE OFFENDERS.

(*b*) Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 4. This Act came into operation on 1st August, 1909. The Secretary of State may establish such institutions and with the approval of the Treasury authorise the Prison Commissioners to acquire land or erect or acquire any building, or appropriate the

Sentence of detention in a Borstal institution.

A sentence of detention under penal discipline in a Borstal institution must be for a term of not less than one year and not more than three years. It may be passed on a person convicted on indictment of an offence for which he is liable to be sentenced to penal servitude or imprisonment, in lieu of a sentence of penal servitude or imprisonment, if it appears to the court that he is not less than sixteen and not more than twenty-one years of age, and that, by reason of his criminal habits or tendencies or association with persons of bad character, it is expedient that he should be subject to detention for such term, and under such instruction and discipline, as appears most conducive to his reformation and the repression of crime (*c*).

803. A youthful offender sentenced to detention in a reformatory school (*d*) who has been convicted by a court of summary jurisdiction of the offence of committing a breach of the rules of the school or of inciting to such breach or of escaping from such a school, and is liable to be sentenced to imprisonment for any such offence, may be sentenced to detention in a Borstal institution instead of imprisonment (*e*).

Transference of prisoner from prison to a Borstal institution.

804. If a person being within the limits of age within which persons may be detained in a Borstal institution is undergoing a sentence of penal servitude or imprisonment passed either before or after December 21, 1908, and the Secretary of State is satisfied that such person may with advantage be detained in a Borstal institution, the Secretary of State may authorise the Prison Commissioners to transfer him from prison to such an institution to serve there the whole or any part of the unexpired residue of his sentence; if he is

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whole or any part of any land or building vested in them or under their control; expenses incurred for this purpose are to be paid out of moneys provided by Parliament (*ibid.*). The Secretary of State may make rules for the management of any such institution and for the temporary detention of young offenders, and subject to such regulations the Prison Acts, 1865 to 1898 (28 & 29 Vict. c. 126, 31 & 32 Vict. c. 21, 40 & 41 Vict. c. 21, 41 & 42 Vict. c. 63, 47 & 48 Vict. c. 51, 49 & 50 Vict. c. 9, 56 & 57 Vict. c. 26), and their penal provisions and the rules thereunder are to apply to every such institution as if it were a prison (*ibid.*).

(*c*) Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 1. Before passing such sentence the court is to consider any report which may be made to it by or on behalf of the Prison Commissioners as to the suitability of the case for such treatment, and must be satisfied that the character, state of health and mental condition of the offender are such that he is likely to profit by such treatment (*ibid.*, s. 1 (1)). The Secretary of State may make an order extending the application of s. 1 of the Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), to persons apparently under such age, not exceeding twenty-three, as may be specified in the order (*ibid.*, s. 1 (2)); the order is not to be made until a draft of it has lain before each House of Parliament for not less than thirty days during the session of Parliament and neither House before the expiration of that period has presented an address to the King against the draft or any part of it; if such address is presented, a new draft order may be made (*ibid.*, s. 1 (2)). See *R.* v. *Kirkpatrick* (1908), 73 J. P. 29, C. C. A.

(*d*) See p. 422, *post*.

(*e*) Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 2. The minimum and maximum term in such a case is the same as under s. 1 (see *ante*). In such a case the sentence of detention in a Borstal institution supersedes the sentence of detention in a reformatory school (*ibid.*, s. 2).

SECT. 2. Punishment of Special Classes of Offenders.

so transferred, the Act is to apply to him as if he had been originally sentenced to detention in such an institution (*f*).

Discharge by licence of person detained.

805. Subject to regulations by the Secretary of State, the Prison Commissioners may at any time after the expiration of six months (or three months if the person is a female) from the commencement of the period of detention discharge by licence a person detained in a Borstal institution on condition that he is placed under the supervision or authority of any society or person named in the licence who is willing to take charge of him (*g*).

Supervision of Prison Commissioners after expiration of sentence.

Every person sentenced to detention in a Borstal institution must on the expiration of the term of his sentence remain for a further period of six months under the supervision of the Prison Commissioners (*h*).

Commutation of residue of term of detention to imprisonment.

806. If the visiting committee of a Borstal institution reports to the Secretary of State that a person detained there is incorrigible or is exercising a bad influence on the other inmates, the Secretary of State may commute the unexpired residue of the term of detention to such term of imprisonment, with or without hard labour, not exceeding the unexpired residue, as the Secretary of State may determine (*i*).

Removal of detained persons.

A person sentenced to detention in a Borstal institution in one part of the United Kingdom may be removed to and detained in a Borstal institution in another part (*k*).

SUB-SECT. 5.—*Youthful Offenders.*

Punishment of persons under sixteen.

807. The law relating to the punishment of persons under sixteen years of age is of an exceptional character (*l*).

Neither a sentence of death nor a sentence of penal servitude can be passed on a person under sixteen years of age (*m*).

A child under fourteen cannot be imprisoned at all (*n*), and a young person (*i.e.*, a person of fourteen years and upwards and under the age of sixteen) can only be imprisoned in exceptional cases (*o*).

The conviction of a child or young person is not to be regarded

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(*f*) Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 3.

(*g*) *Ibid.*, s. 5. As to contributions from the public funds towards the expenses of such a society, see s. 8. See as to revocation of licence and rearrest, s. 5 (3), (4), (5), (6).

(*h*) *Ibid.*, s. 6 (1). See as to the recalling of such a person to a Borstal institution during this period, s. 6 (2), (3), (4).

(*i*) *Ibid.*, s. 7.

(*k*) *Ibid.*, s. 9. According as the person is detained in England, Scotland, or Ireland, the removal must be by the authority of the Secretary of State, the Secretary for Scotland, or the Lord Lieutenant of Ireland, and must be with the consent of that one of these authorities who acts for the part of the United Kingdom to which the person is removed (*ibid*).

(*l*) It is now governed chiefly by the provisions of the Children Act, 1908 (8 Edw. 7, c. 67), which came into force on 1st April, 1909 (*ibid.*, s. 134 (2)).

(*m*) *Ibid.*, ss. 102 (1), (2), 103, 131. A sentence of death cannot be recorded against a person under sixteen (*ibid.*, s. 103).

(*n*) *Ibid.*, ss. 102 (1), 131.

(*o*) *Ibid.*, s. 102 (3); see p. 421, *post*. The prohibition and restriction of imprisonment does not become operative until the 1st January, 1910 (s. 112).

as a conviction for felony for the purposes of any disqualification attaching to felony (*p*).

Punishments which can be awarded to persons under sixteen.

808. The punishments which can be awarded in the case of a person under sixteen are as follows: (1) the offender may, according to the nature of the offence which he has committed, be detained in a place of detention or in an industrial or reformatory school or may be whipped, and if of the age of fourteen years or upwards may be fined or in exceptional cases (*q*) be imprisoned; (2) he may be discharged on his entering into a recognisance or placed under the supervision of a probation officer; or (3) the parent or guardian of the offender may be ordered to be fined or to give security for the good behaviour of the offender (*r*).

Detention during the King's pleasure.

809. A person under sixteen convicted of an offence for which the punishment is death in the case of an adult must be sentenced to be detained during the King's pleasure, and when so sentenced is liable to be detained in such place and under such conditions as the Secretary of State may direct (*s*).

Detention for specified period in such place as Secretary of State may direct.

810. If a person under sixteen is convicted of manslaughter or an attempt to murder or of wounding with intent to do grievous bodily harm, and the court is of opinion that no punishment which it is authorised to inflict under the provisions of the Children Act, 1908, is sufficient (*a*), the court may sentence the offender to be detained for such period as may be specified in the sentence; a person on whom such a sentence has been passed is, during the specified period, liable to be detained in such place and on such conditions as the Secretary of State may direct (*b*).

Detention in place of detention for period not exceeding one month.

811. Where a person under sixteen is convicted of an offence punishable in the case of an adult with penal servitude or imprisonment, or would, if he were an adult, be liable to be imprisoned on default of payment of any fine, damages, or costs, and the court considers that none of the other methods in which the case may legally be dealt with is suitable, the court may order that he be committed to

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(*p*) Children Act, 1908 (8 Edw. 7, c. 67), s. 100. As to disqualifications on the ground of felony, see p. 428, *post*.

(*q*) *Ibid.*, s. 102 (3).

(*r*) *Ibid.*, s. 107. This section enumerates the different methods possible in dealing with youthful offenders, but confers no power of inflicting any of the punishments mentioned; the punishment which may be awarded in a particular case is prescribed by other sections of the Children Act, 1908 (8 Edw. 7, c. 67) (see ss. 57, 58 (2), 103—106), or by the general law (where it has not been altered by the Children Act, 1908 (8 Edw. 7, c. 67), or by statutes which provide punishment specially applicable to juvenile offenders, see p. 423, *post*). Some of the methods enumerated in s. 107 only apply to courts of summary jurisdiction, *e.g.*, sub-ss. (a) and (d); see title MAGISTRATES.

(*s*) Children Act, 1908 (8 Edw. 7, c. 67), s. 103.

(*a*) *I.e.*, it seems detention in a reformatory or industrial school (s. 57), or *quære*, detention for a period of not more than a month in a place of detention provided under the Act (s. 106); whipping is not a possible punishment for any of the offences specified in the text.

(*b*) *Ibid.*, s. 104. There seems no limit fixed to the period during which such a person may be sentenced to be detained. As to the discharge of a person detained under s. 103 or s. 104, see s. 105. See also Summary Jurisdiction (Children Act) Rules, 1909, W. N. (1909), pp. 111, 269.

SECT. 2. Punishment of Special Classes of Offenders.

custody in a place of detention (*c*) named in the order for such term as may be specified in the order; such term is not to exceed the term for which he might have been imprisoned but for the Act, and is not in any case to exceed one month (*d*).

Detention in reformatory school.

812. When a youthful offender who in the opinion of the court before which he is charged is twelve years of age or upwards is convicted either on indictment or by a petty sessional court of an offence punishable in the case of an adult with penal servitude, the court may, in addition to or in lieu of sentencing him to any other punishment, order that he be sent to a certified reformatory school. If such an offender is sent to such a school, he must not in addition be sentenced to imprisonment (*e*).

In industrial school.

813. A child apparently under the age of twelve years who is charged before a court of assize or quarter sessions or a petty sessional court with an offence punishable by penal servitude or a less punishment, may be sent to a certified industrial school (*f*).

When a person under sixteen may be imprisoned.

814. A person between fourteen and sixteen may be sentenced to imprisonment, if the court before which he is tried certifies that he is of so unruly a character that he cannot be detained in a place of detention provided under the Children Act, 1908 (*g*), or that he is of so depraved a character that he is not a fit person to be so detained (*h*). In no other case may a person under sixteen be sentenced to imprisonment after the 31st December, 1909 (*i*).

(*c*) The place of detention is to be one provided under the Children Act, 1908 (8 Edw. 7, c. 67), s. 106.

(*d*) *Ibid.* It is the duty of the London County Council in the metropolitan police district, and the council of a county borough in a county borough and the standing joint committee of a county in a county, to provide such places of detention for every petty sessional division within their district as may be required for the reception of persons ordered to be detained under the Act, either by arranging with the occupiers of any premises within or without their district for the use of those premises for the purpose or by themselves establishing or joining with another police authority in establishing such places. The same place of detention may be provided for two or more petty sessional divisions (*ibid.*, s. 108 (1), (11)). The provisions of the Act which prohibit or restrict imprisonment (s. 102 (1), (3)), and which impose the obligation to provide places of detention, do not become operative until the 1st January, 1910; but places of detention may be provided at any time after the passing of the Act (*i.e.*, 21st December, 1908) (*ibid.*, s. 108 (10)), and persons under sixteen may be committed to such places, if they are provided, and if the proceedings against such persons are commenced on and after the 1st April, 1909 (ss. 112, 113).

(*e*) *Ibid.*, s. 57 (1). The period of detention in a reformatory school is for not less than three and not more than five years, but is not in any case to extend beyond the time when the offender will, in the opinion of the court, attain the age of nineteen (*ibid.*, s. 65 (a)).

(*f*) *Ibid.*, s. 58 (2). The child is to be sent to an industrial school for such a period as the court thinks proper for his teaching and training, but such period is not to extend beyond the time when the child will, in the opinion of the court, attain the age of sixteen (*ibid.*, s. 65 (b)).

(*g*) 8 Edw. 7, c. 67.

(*h*) *Ibid.*, s. 102 (3).

(*i*) *Ibid.*, ss. 102 (3), 108, 112.

SECT. 2. Punishment of Special Classes of Offenders.

Whipping.

815. A male person under sixteen may be sentenced to be whipped in the case of all offences for which an adult person may be so sentenced (*k*).

A male person under sixteen may also be sentenced to be whipped for certain offences under the Larceny Act, 1861 (*l*), the Offences against the Person Act, 1861 (*m*), the Malicious Damage Act, 1861 (*n*), and the Criminal Law Amendment Act, 1885 (*o*).

Where a youthful offender of the age of twelve years and upwards, but under sixteen, is sent to a certified reformatory school, he may also, it seems, be sentenced to be whipped, if the offence which he has committed is one in respect of which the punishment of whipping may be inflicted (*p*).

It seems that if a person under sixteen is sentenced to detention for an offence (*q*) for which whipping may be ordered, a sentence of whipping may be added to such sentence (*r*).

(*k*) Children Act, 1908 (8 Edw. 7, c. 67), s. 107 (g); and see p. 411, *ante*. In the case of a whipping under the Garrotters Act, 1863 (26 & 27 Vict. c. 44), if the offender is under sixteen, the number of strokes is not to exceed twenty-five at each whipping, and the instrument used is to be a birch-rod (*ibid.*).

(*l*) 24 & 25 Vict. c. 96. Such offences are simple larceny or any felony made punishable by the Larceny Act, 1861 (24 & 25 Vict. c. 96), like simple larceny (s. 4); simple larceny after a previous conviction for felony (s. 7); simple larceny or any offence made punishable by the Larceny Act, 1861 (24 & 25 Vict. c. 96), like larceny after two summary convictions for any offence made punishable summarily under the Act or the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), or Larceny Act, 1861 (24 & 25 Vict. c. 96) (s. 9).

(*m*) 24 & 25 Vict. c. 100. Such offences are injuring or attempting to injure persons by explosive or corrosive substances (ss. 28—30); unlawfully and maliciously putting things on a railway etc. with intent to endanger the safety of railway passengers (s. 32). The Larceny Act, 1861 (s. 119), the Offences against the Person Act, 1861 (s. 70), and the Malicious Damage Act, 1861 (s. 75), provide that whenever whipping is awarded under each of these Acts the offender is to be once privately whipped, and the number of strokes and the instrument with which they are to be inflicted must be specified by the court in the sentence. Whipping can also be inflicted for certain offences dealt with by a court of summary jurisdiction under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 10.

(*n*) 24 & 25 Vict. c. 97. Such offences are setting fire or attempting to set fire to houses etc. (ss. 1—8).

(*o*) 48 & 49 Vict. c. 69, s. 4 (unlawfully and carnally knowing or attempting to have unlawful carnal knowledge of any girl under the age of thirteen). In a case of whipping under this statute the court is to specify the number of strokes and the instrument to be used in inflicting them; on a child not over fourteen the number of strokes is not to exceed twelve, and the instrument used must be a birch-rod; see *ibid.*, s. 4; Whipping Act, 1862 (25 & 26 Vict. c. 18).

(*p*) Children Act, 1908 (8 Edw. 7, c. 67), s. 57 (1). The part of s. 4 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), by which a person under sixteen who committed an offence under that section might be sentenced to be sent to a reformatory school as well as to be whipped was repealed by the Children Act, 1908 (8 Edw. 7, c. 67); *ibid.*, Third Schedule; see s. 57 of that Act.

(*q*) Not being an offence under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 4.

(*r*) All the statutes which authorise whipping except the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 4, authorise it in addition to or in substitution for a sentence of imprisonment or penal servitude; the Children Act, 1908 (8 Edw. 7, c. 67), prohibits a sentence of penal servitude altogether, as regards persons under sixteen, prohibits a sentence of imprisonment altogether

SECT. 2. **Punishment of Special Classes of Offenders.**

Fine etc.

816. If a person under sixteen is charged with any offence for which a fine, damages, or costs may be imposed (*s*), and the court thinks that the case would be best met by the imposition of a fine, damages, or costs, whether with or without any other punishment, the court may, and if the person is under fourteen, must, order that the fine, damages, or costs be paid by the parent or guardian of such person instead of by such person, unless the court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of such person (*t*).

The court may make the same order in the case of a young person (of fourteen years and upwards, but under sixteen) or may order the young person to pay the fine etc. (*a*).

Security for good behaviour.

817. The court may, when a child or young person is charged with any offence, order his parent or guardian to give security for his good behaviour (*b*).

The orders just mentioned may be made against a parent or guardian who has been required to attend at the court and has failed to attend (*c*), but subject to this exception no such order is to be made without giving the parent or guardian an opportunity of being heard (*d*).

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as regards children under fourteen, restricts it to exceptional cases as regards persons over fourteen and under sixteen (*ibid.*, s. 102), and allows a sentence of detention in a place of detention to be substituted for penal servitude and imprisonment (see p. 421, *ante*). The point referred to in the text is somewhat obscure owing to the ambiguous language of s. 107, which contains an enumeration of the "methods of dealing with young persons charged with offences"; these methods are all set out in the alternative, but it is submitted that the section does not prohibit the infliction of more than one of the alternative punishments in any one case, if under any statute in force at the time of the passing of the Act more than one of the alternative punishments or of the punishments for which the Act provides a substitute could be inflicted. It is submitted that the intention of s. 107 of the Act is only to give an enumeration of the different methods of dealing with young persons charged with offences, and that the Act is not intended to affect the provisions of those Acts which specifically deal with young persons, except by substituting detention for penal servitude and imprisonment; and see s. 99 of the Act, which contemplates the infliction of more than one punishment.

(*s*) As to the cases when a fine may be imposed, see p. 412, *ante;* as to damages, see p. 449, *post;* as to costs, see p. 445, *post.*

(*t*) Children Act, 1908 (8 Edw. 7, c. 67), s. 99 (1).

(*a*) *Ibid.*, s. 99. If a young person is fined and does not pay, and would, if he were an adult, be liable to be imprisoned for non-payment, he may be committed to a place of detention under *ibid.*, s. 106.

(*b*) *Ibid.*, s. 99 (2).

(*c*) See *ibid.*, s. 98, as to requiring the attendance of a parent or guardian at a court before which a child or young person charged with an offence is brought.

(*d*) *Ibid.*, s. 99 (4). Any sums ordered to be paid by a parent or guardian under s. 99 or on forfeiture of a security for the good behaviour of a child or young person ordered under s. 99 (2) may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian for the offence with which the child or young person is charged (s. 99 (5)). If such an order is made by a court of assize or quarter sessions an appeal lies against it to the Court of Criminal Appeal, as if the parent or guardian had been convicted on indictment and the order was a sentence passed on his conviction (s. 99 (6)).

SECT. 2. Punishment of Special Classes of Offenders.

818. A person under sixteen who has been convicted on indictment may, like an adult person, be ordered to enter into recognisances, with or without sureties, to keep the peace and be of good behaviour, and such recognisances may be in addition to or in substitution for any other punishment.

Recognisances.

A person under sixteen may be released without punishment on his entering into recognisances, or he may be placed under the supervision of a probation officer during a period of probation, which is not to exceed three years (*e*).

SECT. 3.—*Principles that determine the Amount of Punishment.*

819. In all crimes except those for which the sentence of death must be pronounced (*f*) a very wide discretion in the matter of fixing the degree of punishment is allowed to the judge who tries the case.

Discretion of court as to punishment.

The policy of the law is as regards most crimes to fix a maximum penalty, which is only intended for the worst cases (*g*), and to leave to the discretion of the judge to determine to what extent in a particular case the punishment awarded should approach to or recede from the maximum limit. The exercise of this discretion is a matter of prudence and not of law, but an appeal lies by the leave of the Court of Criminal Appeal against any sentence, and if leave is given, the sentence can be altered by that court (*h*).

In carrying out the task of reviewing sentences the Court of Criminal Appeal will, it seems, be guided by the general principles that govern the awarding of punishment and by the practice of criminal courts, and will apply these principles and this practice to the circumstances of each case (*i*).

820. The object of punishment is the prevention of crime, and every punishment should have a double effect, namely, to prevent the person who has committed a crime from repeating the act or omission and to prevent other members of the community from committing similar crimes (*k*).

Object of punishment.

As regards the particular offender there are three ways of

(*e*) See p. 421, *ante;* and Probation of Offenders Act, 1907 (7 Edw. 7, c. 17), s. 1 (2). As to sending children to industrial schools and the removal of children and young persons from the custody of criminal parents, see titles EDUCATION; INFANTS AND CHILDREN.

(*f*) See p. 409, *ante.*

(*g*) *R.* v. *Harrison* (1909), 2 Cr. App. R. 94.

(*h*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23); see p. 432, *post.* Before the passing of this Act the discretion of a judge in sentencing a prisoner was not subject to review by any judicial tribunal; and the punishment ordered, if justified by law, could only be modified by the Crown exercising the prerogative of mercy on the advice of the Home Secretary.

(*i*) See p. 435, *post.*

(*k*) 4 Bl. Com. 11; Bentham, Rationale of Punishment, p. 19: "The prevention of offences divides itself into two branches—particular prevention, which applies to the delinquent himself, and general prevention, which is

SECT. 3. Principles that determine the Amount of Punishment.

providing by punishment against the recurrence of an offence: (1) by taking from him the power of offending (incapacitation); (2) by taking away the desire of offending (reformation); (3) by making him afraid of offending (intimidation) (*l*).

In some cases, besides providing for the prevention of crimes in future, punishment may also include reparation for the past injury by ordering the offender to compensate the person injured (*m*).

As regards other members of the community who are disposed to commit similar offences, the only way of providing by punishment against the commission of the offence is by the terror which the punishment of an individual produces in others.

Application of principles.

821. Thus, if a crime has been committed which is of a kind calculated to inspire great alarm, as manifesting a very mischievous disposition, or is specially rife in a particular district or throughout the country, it may be necessary to award a very severe punishment and to take away from the offender the power of committing such a crime or any crime for a long period (*n*). If the crime is less dangerous, and the offender may be allowed to return to society after a shorter period of detention, the punishment should possess qualities calculated to reform or to intimidate him (*o*), or if there are exceptional circumstances, punishment may be respited and the offender may be given a chance of leading an

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applicable to all the members of the community." See also p. 20: "General prevention ought to be the chief end of punishment, as it is its real justification. If we could consider an offence which has been committed as an isolated fact, the like of which would never recur, punishment would be useless. . . . But when we consider that an unpunished crime leaves the path open not only to the same delinquent, but also to those who may have the same motives and opportunities for entering upon it, we perceive that the punishment inflicted on the individual becomes a source of security to all. Punishment is elevated to the first rank of benefits, when it is regarded not as an act of wrath or vengeance against a guilty or unfortunate individual who has given way to mischievous inclinations, but as an indispensable sacrifice to the common safety."

(*l*) Bentham, Rationale of Punishment, 20.

(*m*) For an example of this, see Forfeiture Act, 1870 (33 & 34 Vict. c. 23), ss. 4, 15, p. 449, *post*. A criminal court may make an order for the restitution of property on a conviction for larceny of a similar offence (see p. 684, *post*).

(*n*) *E.g.*, by sentencing him to a long period of penal servitude and by awarding, where it is possible, an exceptional punishment, such as flogging (see the Garrotters Act, 1863 (26 & 27 Vict. c. 44), s. 1). See, too, *R.* v. *Spencer* (1908), 1 Cr. App. Rep. 37, where the Court of Criminal Appeal refused to interfere with a sentence of twelve years' penal servitude passed on a burglar, although it was his first conviction and although he had previously borne a good character; but in that case the prisoner, though he had ample means to lead a honest life, was found with a full equipment for committing burglaries, and the marks on fifteen houses in the neighbourhood which had been burglariously entered were marks that might have been made by a jemmy found in his possession, and the neighbourhood had been so terrorised by burglaries that ninety policeman had had to patrol the district; see also *R.* v. *Boyd* (1908), 1 Cr. App. Rep. 64, where it was held that an "epidemic" of burglaries in a neighbourhood might be taken into account in fixing the sentence on a burglar. See *R.* v. *Warner* (1909), 2 Cr. App. Rep. 177.

(*o*) Bentham, Rationale of Punishment, 21.

honest life under a condition that if he does not do so he will be subjected to punishment (*p*).

SECT. 3. Principles that determine the Amount of Punishment.

Matters to be considered in fixing punishment.

822. The court, in fixing the punishment for any particular crime, will take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender, the provocation which he has received, if the crime is one of violence, the antecedents of the prisoner up to the time of sentence, his age and character, and, except in the case of habitual criminals, any recommendation to mercy which the jury may have made (*q*).

(*p*) See *R.* v. *Francis* (1908), 1 Cr. App. Rep. 259.

(*q*) "The fundamental rule of criminal judicature" is "that the measure of punishment should be in proportion to the malignity appearing in the intention of the offender" (*per* ASHURST, J., *R.* v. *Stratton* (1779), 21 State Tr. 1045, at p. 1291). See *R.* v. *Weaver* (1908), 1 Cr. App. Rep. 12; *R.* v. *Arnold* (1908), 1 Cr. App. Rep. 27; *R.* v. *McGuire* (1908), 1 Cr. App. Rep. 38; *R.* v. *Maurice* (1908), 1 Cr. App. Rep. 176; *R.* v. *Riley* (1908), 1 Cr. App. Rep. 93; *R.* v. *Boyd* (1908), 1 Cr. App. Rep. 64; *R.* v. *Spencer* (1908), 1 Cr. App. Rep. 37; *R.* v. *Prince* (1908), 1 Cr. App. Rep. 252; *R.* v. *Concannon* (1908), 1 Cr. App. Rep. 229; *R.* v. *Kirkpatrick* (1908), 73 J. P. 29, C. C. A.; *R.* v. *Nuttall* (1908), 1 Cr. App. Rep. 180; *R.* v. *Morton* (1908), 1 Cr. App. Rep. 255; *R.* v. *O'Connell* (1909), 2 Cr. App. Rep. 11. The previous good character of a prisoner may be a reason for inflicting a light or nominal sentence upon him, especially when he has been in employment and his employer is willing to take him back (*R.* v. *Francis* (1908), 1 Cr. App. Rep. 259). But good character is not to be taken into consideration, when by means of good character a person has obtained an opportunity for committing the offence charged (*R.* v. *Sidlow* (1908), 1 Cr. App. Rep. 28). So in considering the punishment to be passed on persons in positions of trust for misappropriation of money or other property good character has little weight, and is often an aggravating circumstance (see *R.* v. *Soper* (1908), 1 Cr. App. Rep. 73). A crime by a person in a position of trust who abuses the trust imposed upon him is punished with greater severity than a crime by a person who stands in no fiduciary or confidential relation to the person injured (*R.* v. *Sidlow, supra*; *R.* v. *Soper, supra*).

In larceny and similar crimes the value of the property stolen may be a matter to be considered, for if a person were punished with the same severity for stealing a thing of small value as for stealing a thing of great value, a dishonest person would always prefer committing a theft on a large scale (Bentham, Rationale, 36, 41; *R.* v. *Nuttall* (1908), 1 Cr. App. Rep. 180; *R.* v. *Morton* (1909), 2 Cr. App. Rep. 145). But there are many cases where the severity of the punishment does not depend on the value of the property stolen, as where a prisoner is convicted of stealing something of small value, but the crime which is brought home to him is only one of a series of similar offences (*R.* v. *Maurice* (1908), 1 Cr. App. Rep. 176, where a sentence of five years' penal servitude for stealing one penny was upheld by the Court of Criminal Appeal, but the prisoner had been guilty of systematic frauds extending over a long period, and the sentence was supported as a means of keeping her out of mischief; and see *R.* v. *Rees* (1908), 1 Cr. App. Rep. 83, where a sentence of penal servitude for a trifling theft by a person who had been convicted several times before for crimes arising out of drink was upheld as the only means of reclaiming her). It is the practice of criminal courts before passing sentence to inquire into the antecedents of a prisoner and to punish habitual offenders more severely than those who have not been previously convicted or have not committed other crimes (*R.* v. *Weaver* (1908), 1 Cr. App. Rep. 12). But it is not right to be guided merely by previous convictions, and if the offence for which punishment is to be awarded does not indicate a deliberate return to crime, and there are circumstances which do not show that the offence was planned beforehand, less weight is to be given to previous offences (*R.* v. *Nuttall* (1908), 1 Cr. App. Rep. 180). More

SECT. 4. Disqualifications following on Conviction.

SECT. 4.—*Disqualifications following on Conviction.*

SUB-SECT. 1.—*Forfeiture of Office.*

Forfeiture of office etc. by person convicted of felony.

823. If a person convicted of treason or felony holds any military or naval office or any civil office under the Crown, or other public employment, or any ecclesiastical benefice, or any place, office, or emolument in any university, college, or other corporation, or is entitled to any pension or superannuation allowance payable by the public or out of any public fund, and is sentenced to death or penal servitude or any term of imprisonment with hard labour, or a term of imprisonment without hard labour exceeding twelve months, such office, benefice, employment or place forthwith becomes vacant, and the pension or superannuation allowance or emolument forthwith determines and ceases to be payable, unless such person receives a free pardon from the King within two months of his conviction or before the filling up of such office etc. (*r*).

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weight should be given to previous convictions for offences of the same character as that for which the offender is to be punished than to convictions for offences of a different character (*R.* v. *Boucher* (1909), 2 Cr. App. Rep. 177). And a first offender may commit an offence of such malignity that a severe sentence should be imposed, and the absence of previous convictions may be disregarded as only showing that the offender has not been found out before (see *R.* v. *Spencer* (1908), 1 Cr. App. Rep. 37).

If a person has been convicted of a crime and there are other charges hanging over him in respect of which he has not been indicted, the judge in passing sentence should, if the prisoner consents, take the other charges into account, and in such a case it is not usual to proceed with these other charges. If such charges are not taken into account and the prisoner is subsequently convicted in respect of any of them, the sentence already inflicted on the prisoner in respect of the earlier charge is a ground for a mitigation of the sentence for the later one (*R.* v. *Syres* (1908), 1 Cr. App. Rep. 172; *R.* v. *Hawes* (1908), 1 Cr. App. Rep. 42; *R.* v. *Markham* (1909), 2 Cr. App. Rep. 160; *R.* v. *Aleron* (1909), 2 Cr. App. Rep. 152; *R.* v. *Taylor* (1909), 2 Cr. App. Rep. 158).

The fact that a person committed a crime when in a state of drunkenness may be a mitigating circumstance as negativing deliberateness of intention (*R.* v. *Nuttall* (1908), 1 Cr. App. Rep. 180; *R.* v. *Morton* (1908), 1 Cr. App. Rep. 255; *R.* v. *Haden* (1909), 2 Cr. App. Rep. 148; *R.* v. *Meade* (1909), 2 Cr. App. Rep. 54; and see p. 242, *ante*); but drunkenness is put forward by prisoners too frequently as an excuse for crime to be deserving of much consideration, and may be a ground for passing such a sentence as will debar the prisoner for some time from the use of intoxicating liquors (*R.* v. *Rees* (1908), 1 Cr. App. Rep. 83).

A long period of detention is often justifiable with the object of incapacitating an offender from committing crimes for a considerable period or of reclaiming him (*R.* v. *Maurice, supra*; *R.* v. *Rees, supra*); and even in the case of those who are not hardened criminals it may be justifiable and desirable to impose a sentence of sufficient length to enable the offender to undergo a special treatment (*e.g.*, the Borstal system) (*R.* v. *Kirkpatrick* (1908), 73 J. P. 29, C. C. A.).

In cases where personal injuries are inflicted the amount of provocation that the prisoner received is a matter to be taken into account in fixing the sentence (*R.* v. *O'Connell* (1909), 2 Cr. App. Rep. 11).

For some offences, *e.g.*, manslaughter or wounding with intent to do grievous bodily harm, it is impossible to lay down any standard as to what is the proper punishment; the question depends on the circumstances of each particular case (*R.* v. *Gorman* (1909), 2 Cr. App. Rep. 187).

(*r*) Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 2. Attainder or corruption of blood, and forfeiture or escheat on conviction of treason or felony were abolished by this Act (s. 1). The provision as to disqualification arising from a conviction for felony does not apply to a person under sixteen (Children Act, 1908 (8 Edw. 7, c. 67), ss. 100, 131).

Incapacities of person convicted of felony.

824. Such person on his conviction becomes, and until he has suffered the punishment allotted or any punishment lawfully substituted, or until he receives a free pardon, continues to be incapable of holding any such office, employment, or benefice, or of being elected or sitting or voting as a member of either House of Parliament, or of exercising any right of suffrage or other parliamentary or municipal franchise whatever within England, Wales, or Ireland (*s*).

825. A convict (*i.e.*, a person against whom judgment of death or of penal servitude has been pronounced or recorded by any court of competent jurisdiction in England, Wales, or Ireland upon any charge of treason or felony) cannot bring an action for the recovery of any property, debt, or damage while he is subject to the operation of the Forfeiture Act, 1870 (*t*), and cannot alienate or charge any property or make any contract (*u*).

SUB-SECT. 2.—*Appointment of Administrator of Convict's Property.*

Appointment of administrator of property of convict.

826. The King, or any person in that behalf authorised by the King under the royal sign manual, may by writing commit the custody and management of the property of any such convict to an administrator. Such appointment may be revoked or may be determined by death, and thereupon a new administrator may be appointed (*v*). On the appointment of any such administrator all the real and personal property, including choses in action, to which the convict was entitled at the time of his conviction, or to which he may be entitled after his conviction, vests in the administrator for all the estate and interest of the convict therein (*x*). The administrator has absolute power to let, mortgage, sell, and transfer any part of the convict's property (*y*). He may pay out of the convict's property all costs and expenses which the convict may have been condemned to pay and all costs, charges, and expenses incurred by the convict in and about his defence, and all costs, charges, and expenses which the administrator may incur in carrying out his duties with reference to such property or to any claims made against it (*z*). He may also pay or satisfy any debt or liability of the convict which may be established in due course of law or may otherwise be proved to his satisfaction, and may also cause any property which may come to his hands to be delivered to any person claiming to be justly entitled to it, if the right of such person is established in due course of law or otherwise proved to the satisfaction of the administrator (*a*).

(*s*) Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 2.

(*t*) 33 & 34 Vict. c. 23.

(*u*) *Ibid.*, s. 8; see *ibid.*, s. 6. On the death or bankruptcy of the convict or on his suffering the full term of his punishment or any other substituted punishment, or on his receiving a free pardon, he ceases to be subject to the operation of the provisions contained in ss. 28, 29 of the Act (*ibid.*, s. 7). And see title ACTION, Vol. I., p. 29.

(*v*) *Ibid.*, s. 9.

(*x*) *Ibid.*, s. 10. See *Re Gaskell and Walters' Contract*, [1906] 1 Ch. 440; 2 Ch. 1, C. A., as to powers of administrator.

(*y*) *Ibid.*, s. 12. See *Carr* v. *Anderson*, [1903] 1 Ch. 90; affirmed 2 Ch. 279, C. A.

(*z*) *Ibid.*, s. 13.

(*a*) *Ibid.*, s. 14.

SECT. 4.
Disqualifications following on Conviction.

He may make compensation for any loss of property or other injury alleged to have been suffered by any person through or by means of any alleged criminal or fraudulent act of the convict, although no proof of such alleged criminal or fraudulent act may have been made in any court (*b*); and may make such allowances as he may think fit for the support of the convict's wife or child or any relative dependent on the convict for support, or of the convict himself, if he is at large under licence (*c*).

Compensation to person injured by criminal or fraudulent act of convict.

The exercise by the administrator of the powers conferred upon him is binding upon, and is not to be questioned by, the convict or by any person claiming an interest in the convict's property (*d*).

Revesting of convict's property in convict.

827. Subject to the exercise of the powers conferred on the administrator, the convict's property is to be preserved and held in trust by the administrator and is to revest in the convict, should his disability be removed, or in his heirs or legal personal representatives, or such other persons as may be lawfully entitled to such property, and the powers given to the administrator are thereupon to determine (*e*).

Interim curator of convict's property.

828. If no administrator is appointed, an interim curator of the property of the convict may be appointed by any justices in petty sessions or by any justice of the peace having jurisdiction in the place where the convict before his conviction had his last usual residence; the powers of the interim curator are similar to those of the administrator (*f*).

Every administrator and interim curator is to be accountable to the convict for all property which has been possessed or received by the administrator etc. and not duly administered (*g*).

Property acquired by a convict while he is lawfully at large under a licence does not vest in the administrator or interim curator (*h*).

Disqualifications on conviction.

829. There are certain special disqualifications which follow on a conviction on indictment for particular criminal offences (*i*).

(*b*) Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 15.
(*c*) *Ibid.*, s. 16.
(*d*) *Ibid.*, s. 17.
(*e*) *Ibid.*, s. 18.
(*f*) *Ibid.*, ss. 21—27.
(*g*) *Ibid.*, s. 29.
(*h*) *Ibid.*, s. 30.
(*i*) A beneficed clergyman convicted for treason or felony, or convicted on an indictment for misdemeanour, and sentenced on any such conviction to imprisonment with hard labour or any greater punishment, forfeits his benefice and becomes incapable of holding preferment (Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), s. 1). A person convicted of felony is for ever disqualified from selling beer and cider or wine or spirits by retail (Beerhouse Act, 1840 (3 & 4 Vict. c. 61), s. 7; Wine and Beerhouse Amendment Act, 1870 (33 & 34 Vict. c. 29), s. 14; Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), s. 22). A person convicted of felony cannot serve as parish constable (Parish Constables Act, 1842 (5 & 6 Vict. c. 109), s. 7). A person convicted of a crime and sentenced to imprisonment with hard labour or any greater punishment cannot for five years from his sentence be a parish or district councillor or a guardian of the poor (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 46 (1) (c)). No person convicted of felony, fraud, or perjury can hold any parish office or have the management of the poor in any way whatever (Poor Law Amendment Act, 1834

Such disqualifications, so far as they create any incapacity, are removed if the offender receives a free pardon (*j*).

It is not clear whether the endurance of punishment has, as regards the removal of disqualifications, the same effect as a pardon (*k*).

SUB-SECT. 3.—*Outlawry.*

What outlawry is.

830. Outlawry in criminal proceedings is a process issued against a person with regard to whom an indictment has been found by a grand jury, and who does not appear to plead to the indictment, or after pleading does not appear to receive sentence, and whose apprehension cannot be effected before the judgment in outlawry is pronounced (*l*).

If after the issue of certain writs and the making of certain

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(4 & 5 Will. 4, c. 76), s. 48); this section is repealed, so far as relates to a parish or district councillor or guardian, but remains in force as to other persons (Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 89 and schedule). If any-one who has been convicted of forgery or of wilful and corrupt perjury or subornation of perjury or common barratry afterwards acts as a solicitor in any action brought in any court of law or equity in England, he is liable to be sent to penal servitude for seven years (Frivolous Arrests Act, 1725 (12 Geo. 1, c. 29), s. 4). A medical practitioner, apothecary, or dentist who has been convicted of felony or misdemeanour may be removed from the register (Medical Act, 1858 (21 & 22 Vict. c. 90), s. 29; Apothecaries Act Amendment Act, 1874 (37 & 38 Vict. c. 34), s. 4; Dentists Act, 1878 (41 & 42 Vict. c. 33), s. 13). Veterinary surgeons convicted of misdemeanours or greater offences may be removed from the register (Veterinary Surgeons Act, 1881 (44 & 45 Vict. c. 62), s. 6). As to disqualifications from convictions for corrupt practices, see title ELECTIONS. By the Juries Act, 1870 (33 & 34 Vict. c. 77), s. 10, no man who has been attainted of any treason or felony or convicted of any crime that is infamous, unless he shall have obtained a free pardon, and no man who is under outlawry, is qualified to serve on a jury; attainder for treason or felony had already been abolished at the time of the passing of the Act (see note (*r*) on p. 428, *ante*), and it is not clear what is the effect of the provision, so far as it relates to attainder, while outlawry has gone out of use.

(*j*) See *Hay* v. *Tower Division of London Justices* (1889), 24 Q. B. D. 561.

(*k*) If an offender has been convicted of any felony not punishable with death and has endured the punishment awarded, the endurance of punishment has the same effects and consequences as a pardon under the Great Seal (Civil Rights of Convicts Act, 1828 (9 Geo. 4, c. 32), s. 3). There is some doubt as to whether the endurance of punishment removes the incapacity to hold a retail spirit licence under the Wine and Beerhouse Amendment Act, 1870 (33 & 34 Vict. c. 29), s. 14, and similar incapacities. In *R.* v. *Vine* (1875), L. R. 10 Q. B. 195, it was held that on the passing of that Act, a person who had been convicted of felony, although he had served his sentence, became disqualified for ever for holding a licence; but the Civil Rights of Convicts Act, 1828 (9 Geo. 4, c. 32), was not referred to in that case (though POLLOCK, B., in *Hay* v. *Tower Division of London Justices*, *supra*, at p. 566, seems to have thought it was), and the effect of the endurance of punishment was not considered; see *Leyman* v. *Latimer* (1877), 3 Ex. D. 15.

(*l*) See Corner, Crown Practice, 240; Short and Mellor, Practice of the Crown Office, 2nd ed., 270—271. Outlawry in civil proceedings has been abolished (Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59), s. 3). Outlawry in criminal cases has never been abolished. It has, however, passed into disuse. The last instance of any proceeding in outlawry was in *R.* v. *Tempest* (1859), Short and Mellor, Practice of the Crown Office, 2nd ed., 270; but no judgment was pronounced in that case as the defendant surrendered. The last judgment of outlawry was in *R.* v. *Swabey* (1855); see Short and Mellor, Practice of the Crown Office, 2nd ed., 270.

SECT. 4. Disqualifications following on Conviction.

proclamations the defendant is not found, judgment of outlawry may be pronounced against him (*m*).

Judgment of outlawry.

In the case of offences punishable with death judgment of outlawry makes the person liable to suffer death and confiscation of property; on the defendant being brought before the court execution is awarded on the judgment of outlawry without any further judgment (*n*).

In other cases judgment of outlawry renders the defendant liable to perpetual imprisonment, and to the forfeiture of his personal property and the profits of his real estate (*o*)

In the case of indictments for treason and felony a judgment of outlawry operates as a conviction upon such indictments (*p*). In the case of indictments for misdemeanour such judgment does not so operate (*q*).

Traversing and reversal of outlawry.

831. A defendant upon a charge of treason who has been outlawed may appear in the High Court of Justice within a year, and traverse the outlawry, and undergo trial on the indictment (*r*).

Where a defendant upon a charge of felony or misdemeanour has been outlawed, there appears to be no means now provided for securing the reversal of such outlawry (*s*). The only way in which such judgment of outlawry can be rendered inoperative is by a royal pardon or by an Act of Parliament (*a*).

Part VIII.—Appeals in Criminal Cases.

SECT. 1.—*The Court of Criminal Appeal.*

Appeal to Court of Criminal Appeal.

832. Any person who has been convicted on indictment can appeal to the Court of Criminal Appeal (*b*) against his conviction and his sentence—in some cases as of right, in other cases by leave (*c*). This is the only way of questioning a conviction on

(*m*) Corner, Crown Practice, 240; Short and Mellor, Practice of the Crown Office, 2nd ed., 270—271; Crown Office Rules, 1906, rr. 88—101.

(*n*) See *R.* v. *Holloway* (1684), 10 State Tr. 1, 5; *R.* v. *Armstrong* (*Sir Thomas*) (1684), 10 State Tr. 105, 111; *R.* v. *Wilkes* (1770), 19 State Tr. 1075, at p. 1098

(*o*) *R.* v. *Wilkes*, *supra*. The Forfeiture Act, 1870 (33 & 34 Vict. c. 23), does not apply to forfeiture on outlawry (*ibid.*, s. 1).

(*p*) *R.* v. *Holloway*, *supra*; 4 Bl. Com. 314; 2 Hawk. P. C., c. 48, s. 22.

(*q*) *R.* v. *Tippin* (1689), 2 Salk. 494.

(*r*) *Armstrong's* (*Sir Thomas*) *Case* (1684), 10 State Tr. 105.

(*s*) The reversal of a sentence of outlawry in cases where the defendant was charged with felony or misdemeanour was formerly obtainable by means of a writ of error (see Crown Office Rules, 1906, r. 107). But writs of error are now abolished (Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20). See as to outlawry, Law Quarterly Review, Vol. XVIII., p. 297, "Is Outlawry Obsolete?" by Sir H. Erle Richards.

(*a*) See *R.* v. *Cellier* (1680), 7 State Tr. 1043; Hargrave, Juridical Arguments and Collections, Vol. II., p. 226.

(*b*) For the constitution, jurisdiction, judges, and officers of the court, see title COURTS, pp. 91—94, *ante*.

(*c*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 3.

indictment, except in the case of a conviction for non-repair etc. of a highway etc. (*d*).

Writs of error are abolished (*e*), but it seems that in all cases in which error could have been brought before the Criminal Appeal Act, 1907 (*f*), an appeal will now lie as on a question of law to the Court of Criminal Appeal, and that the effect of the abolition of writs of error is only to alter the procedure in cases in which such writs would have been applicable. The powers and practice formerly existing in the High Court of Justice in respect of motions for new trials and the granting of new trials in criminal cases are abolished (*g*). The Court of Criminal Appeal have no power to order a new trial (*h*).

Abolition of writs of error and new trials in criminal cases.

A person who has been convicted on indictment may also appeal to the Court of Criminal Appeal by way of case stated (*i*), if the judge who tried him consents to grant a case (*k*).

Appeal by case stated.

833. If the Attorney-General gives a certificate to the Director of Public Prosecutions or to the prosecutor or defendant that the decision of the Court of Criminal Appeal in a particular case involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, an appeal will lie from the Court of Criminal Appeal to the House of Lords; in all other cases the determination of the Court of Criminal Appeal is final and no appeal lies from it (*l*).

When appeal lies to House of Lords.

834. A person who has been convicted on an indictment may appeal to the Court of Criminal Appeal without leave on any ground of appeal which involves a question of law alone. If the judge who tries him certifies that the case is a fit one for appeal, or if the Court of Criminal Appeal give leave, such a person may appeal

Appeal without leave.

(*d*) On a conviction on an indictment for non-repair of highway etc. the appeal lies, not to the Court of Criminal Appeal, but to the Court of Appeal.

(*e*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20 (1).

(*f*) 7 Edw. 7, c. 23.

(*g*) *Ibid.*, s. 20 (1). It is not clear whether this applies to a case where an indictment has been removed by *certiorari*. A new trial may still be granted by the Court of Appeal in the case of an indictment for non-repair of a highway etc.

(*h*) *R.* v. *Dyson* (1908), 1 Cr. App. Rep. 13; *R.* v. *Dibble* (1908), 1 Cr. App. Rep. 155; *R. v. Colclough* (1909), 2 Cr. App. Rep. 84; *R.* v. *Lewis* (1909), 78 L. J. (K. B.) 722, C. C. A.

(*i*) See Crown Cases Act, 1848 (11 & 12 Vict. c. 78).

(*k*) *Ibid.*, ss. 1, 2. By the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20 (4), all the jurisdiction under the Crown Cases Act, 1848 (11 & 12 Vict. c. 78), which was originally vested in the judges of the Courts of King's Bench, Common Pleas, and Exchequer, and was by the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47, transferred to the judges of the High Court of Justice, is now vested in the Court of Criminal Appeal. That court may decide that the procedure under the Crown Cases Act, 1848 (11 & 12 Vict. c. 78), as to the statement of a case should be followed, and require a case to be stated accordingly under that Act in the same manner as if a question of law had been reserved (Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20 (4)). It seems that a case may still be stated under the Crown Cases Act, 1848 (11 & 12 Vict. c. 78), without any such order, if the presiding judge at the trial consents to state a case.

(*l*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 1 (6).

SECT. 1. The Court of Criminal Appeal.

against his conviction on any ground of appeal which involves a question of fact alone or a mixed question of law and fact, or any other ground which appears to the court to be a sufficient ground of appeal. If the Court of Criminal Appeal give leave, such a person may appeal against the sentence passed upon him, unless the sentence is one fixed by law (*m*).

Appeal with leave.

Ground for allowing appeal against conviction.

835. On an appeal being brought against a conviction the court are to allow the appeal, if they think—

(1) That the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence (*n*);

(2) That the judgment should be set aside on the ground that the decision of the court below was wrong on any question of law (*o*);

(*m*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 3. A person sentenced to preventive detention under the Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), may appeal without leave against such a sentence; see *ibid.*, s. 11. The sentence of death is fixed by law in cases of murder, treason, piracy, burning the King's ships etc.; and see p. 409, *ante*. For form of certificate by the judge at the trial, see Criminal Appeal Rules, 1908, schedule, Form 1. "Sentence" in the Criminal Appeal Act includes any order of court made on conviction with reference to the person convicted or his wife or children, and any recommendation of the court as to the making of an expulsion order in the case of a person convicted who is an alien (Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 21). The "conviction" against which the appeal is brought means here, it seems, the verdict of the jury, and not the sentence of the court (*R.* v. *Miles* (1890), 24 Q. B. D. 423, C. C. R.; *R.* v. *Blaby*, [1894] 2 Q. B. 170, C. C. R.); but see *Burgess* v. *Boetefeur* (1844), 7 Man. & G. 481, at p. 504. There is no appeal against the finding of a jury that a prisoner is fit to plead (*R.* v. *Jefferson* (1908), 1 Cr. App. Rep. 95). There is no appeal against a sentence substituted by the King on the recommendation of the Home Secretary for a death sentence (*R.* v. *Lord* (1908), 1 Cr. App. Rep. 110). A prisoner who pleads guilty will only in very exceptional circumstances be allowed to appeal against his conviction, but he may by leave appeal against his sentence (*R.* v. *Lucas* (1908), 1 Cr. App. Rep. 61; *R.* v. *Ettridge*, [1909] 2 K. B. 24, C. C. A. (overruling *R.* v. *Davidson* (1909), 2 Cr. App. Rep. 51); *R.* v. *Sneesby* (1909), 2 Cr. App. Rep. 178; in *R.* v. *Verney* (1909), 2 Cr. App. Rep. 107, leave was given in exceptional circumstances to a prisoner to appeal against his conviction and to call evidence, and the conviction was quashed). As to appeals against sentence, see p. 435, *post*.

(*n*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (1). These words are adopted from the judgment of the House of Lords in *Metropolitan Rail. Co.* v. *Wright* (1886), 11 App. Cas. 152, which lays down the rules according to which the verdict of a jury in a civil case will or will not be supported (*R.* v. *Ashford* (1908), 1 Cr. App. Rep. 185). For instances of the verdict of the jury being set aside by the Court of Criminal Appeal on the ground that there was no evidence or no sufficient evidence to support it, see *R.* v. *Osborne* (1908), 1 Cr. App. Rep. 144; *R.* v. *Pearson* (1908), 1 Cr. App. Rep. 77; *R.* v. *Dibble* (1908), 1 Cr. App. Rep. 155; *R.* v. *Orris* (1908), 1 Cr. App. Rep. 199; *R.* v. *Dunleavey* (1908), 1 Cr. App. Rep. 240; *R.* v. *Tate* (1908), 1 Cr. App. Rep. 39; *R.* v. *Warren* (1909), 25 T. L. R. 633, C. C. A.; *R.* v. *Leach* (1909), 2 Cr. App. Rep. 72; *R.* v. *Nicholson* (1909), 2 Cr. App. Rep. 195. But the court will not retry a case on evidence properly submitted at the trial to the jury (*R.* v. *Martin* (1908), 1 Cr. App. Rep. 52; *R.* v. *Mason* (1908), 1 Cr. App. Rep. 73, at p. 75), nor give leave to appeal where the only ground is that the verdict is against the weight of evidence (*R.* v. *Burke* (1908), 1 Cr. App. Rep. 245).

(*o*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (1). In the following cases a judgment has been set aside on the ground of misdirection:—*R.* v. *Dyson*,

(3) That on any ground there was a miscarriage of justice (*p*).

In any other case the court are to dismiss the appeal, and even if they think that the point raised in the appeal might be decided in favour of the appellant they may dismiss the appeal, if they consider that no substantial miscarriage of justice has actually occurred (*q*).

If the court allow an appeal against a conviction, they must quash the conviction and direct a judgment and verdict of acquittal to be entered (*a*).

Appeal against sentence.

836. On an appeal against sentence the court, if they think a different sentence should have been passed, are to quash the sentence and pass such other sentence warranted in law as they think ought to have been passed, and in other cases are to dismiss the appeal; the substituted sentence may be more or less severe than the sentence passed; a different sentence may be passed, whether the appellant has or has not pleaded guilty (*b*).

[1908] 2 K. B. 454; *R.* v. *Sovosky* (1908), 1 Cr. App. Rep. 98; *R.* v. *Warren* (1909), 25 T. L. R. 633; *R.* v. *Mason* (1909), 73 J. P. 250; *R.* v. *Stoddart* (1909), 25 T. L. R. 612. In the following cases the court refused to set aside the judgment as there had been no misdirection or no substantial misdirection:—*R.* v. *Hunting* (1908), 1 Cr. App. Rep. 177; *R.* v. *Lovett* (1908), 1 Cr. App. Rep. 111; *R.* v. *Meyer* (1908), 1 Cr. App. Rep. 10; *R.* v. *Nicholls* (1908), 73 J. P. 11, C. C. A.; *R.* v. *Randles* (1908), 1 Cr. App. Rep. 194; *R.* v. *Joyce* (1908), 1 Cr. App. Rep. 83. In the following cases appeals were allowed on the ground that the wrong judgment had been given on the findings of the jury:—*R.* v. *Rutter* (1908), 1 Cr. App. Rep. 174; *R.* v. *Knight* (1908), 1 Cr. App. Rep. 186; *R.* v. *Muirhead* (1908), 1 Cr. App. Rep. 189. In the following cases fresh evidence was heard by the Court of Criminal Appeal and the appeals were allowed:—*R.* v. *Laws* (1908), 1 Cr. App. Rep. 6; *R.* v. *Betridge* (1908), 1 Cr. App. Rep. 236; *R.* v. *Nicholson* (1909), 2 Cr. App. Rep. 195.

(*p*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (1). In the following cases an appeal has been allowed on the ground that there was a miscarriage of justice:—*R.* v. *Coleman* (1908), 1 Cr. App. Rep. 50; *R.* v. *H. Joyce* (1908), 1 Cr. App. Rep. 142; *R.* v. *Lee* (1908), 1 Cr. App. Rep. 5; *R.* v. *Warner* (1908), 1 Cr. App. Rep. 227; *R.* v. *Nicholson*, *supra*; *R.* v. *Beauchamp* (1909), 73 J. P. 223; *R.* v. *Keating* (1909), 73 J. P. 112; *R.* v. *Hendry* (1909), 25 T. L. R. 635; compare *R.* v. *Nicholls*, *supra*.

(*q*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (1). Compare the similar language of R. S. C. 1883, Ord. 39, r. 6, and *Bray* v. *Ford*, [1896] A. C. 44. See, too, *Makin* v. *A.-G. for New South Wales*, [1894] A. C. 57, P. C., with reference to an analogous provision in a colonial Act. For instances where the Court of Criminal Appeal have dismissed an appeal on the ground that while there may have been some misdirection or mistake or misreception of evidence there had been no substantial miscarriage of justice, see *R.* v. *Westacott* (1908), 25 T. L. R. 192, C. C. A.; *R.* v. *Hampshire* (1908), 1 Cr. App. Rep. 212; *R.* v. *Lovett* (1908), 1 Cr. App. Rep. 111; *R.* v. *Green* (1908), 1 Cr. App. Rep. 124; *R.* v. *Hunting* (1908), 1 Cr. App. Rep. 177; *R.* v. *Meyer* (1908), 1 Cr. App. Rep. 10; *R.* v. *Cutting* (1909), 2 Cr. App. Rep. 150. But see *R.* v. *Dyson*, [1908] 2 K. B. 454; *R.* v. *Westacott*, *supra*. The court cannot order a new trial; see note (*h*) on p. 433, *ante*.

(*a*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 4 (2). See *R.* v. *Saunders*, [1899] 1 Q. B. 490.

(*b*) *Ibid.*, s. 4 (3). See *R.* v. *Ettridge*, [1909] 2 K. B. 24, C. C. A., where it was held that in spite of the words "by the verdict" in s. 4 (3), which are meaningless and must be disregarded in the case of a plea of guilty, the court have power to alter a sentence, when an appellant has pleaded guilty. For instances of reduction of sentences by the court under s. 4 (3), see *R.* v. *Syres* (1908), 1 Cr. App. Rep. 172; *R.* v. *Nuttall* (1908), 1 Cr. App. Rep. 180 (where the

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If it appears to the court that an appellant was not properly convicted on some count or part of the indictment, but was properly convicted on some other count or part of the indictment, the sentence passed may be affirmed, or another sentence may be passed in substitution for it, if such sentence is warranted by the verdict on the count on which the appellant was properly convicted (*c*).

Altering the verdict of the jury.

Where the jury could on the indictment on which the appellant has been convicted have found him guilty of some other offence (*d*), and it appears that the jury must have been satisfied of facts which proved him guilty of such other offence, the court, instead of allowing or dismissing the appeal, may substitute for the verdict found by the jury a verdict for such other offence, and may in substitution for the sentence passed pass such a sentence, not more severe than the one passed, as is warranted by law for such other offence (*e*).

Power of court in case of a special verdict.

837. Where on the conviction of an appellant the jury have found a special verdict, and the Court of Criminal Appeal think that a wrong conclusion has been arrived at by the court below as to the effect of the verdict, the Court of Criminal Appeal, instead of allowing the appeal, may order the proper conclusion to be recorded and pass such sentence in substitution for the sentence passed as is warranted by law (*f*).

Power to order appellant to be detained as a criminal lunatic.

838. If on any appeal it appears to the court that the appellant was insane at the time the act was done or omission made which is charged against him so as not to be responsible according to law for his actions, the court may quash the sentence passed and order the defendant to be kept in custody as a criminal lunatic (*g*).

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principles that guide the court in reducing sentence were stated); *R.* v. *Jones* (1908), 1 Cr. App. Rep. 196; *R.* v. *George* (1908), 1 Cr. App. Rep 168; *R.* v. *Hawes* (1908), 1 Cr. App. Rep. 42; *R.* v. *Briggs*, [1909] 1 K. B. 381; *R.* v. *Martin* (1908), 1 Cr. App. Rep. 209; *R.* v. *Prince* (1908), 1 Cr. App. Rep. 252; *R.* v. *Morton* (1908), 1 Cr. App. Rep 255; *R.* v. *Francis* (1908), 1 Cr. App. Rep. 259; *R.* v. *Whiteman* (1909), 2 Cr. App. Rep. 10; *R.* v. *O'Connell* (1909), 2 Cr. App. Rep. 3; *R.* v. *Harrison* (1909), 2 Cr. App. Rep. 94; *R.* v. *Boxall* (1909), 2 Cr. App. Rep. 175; *R.* v. *Boucher* (1909), 2 Cr. App. Rep. 177; *R.* v. *Edwards* (1909), 73 J. P. 287. In the following cases the severity of the sentence was increased:—*R.* v. *Mortimer* (1908), 1 Cr. App. Rep. 20, and *R.* v. *Hamilton* (1908), 1 Cr. App. Rep. 87. The Court of Criminal Appeal may in passing sentence against an alien add a recommendation as to the making of an expulsion order, and such a recommendation is to have the same effect for the purposes of the Aliens Act, 1905 (5 Edw. 7, c. 13), s. 3, as the certificate and recommendation of the convicting court (see title ALIENS, Vol. I., p. 323) (Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 21).

(*c*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 5 (1).

(*d*) See p. 371, *ante*.

(*e*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 5 (2). See *R.* v. *Cooper* (1908), 1 Cr. App. Rep. 88; *R.* v. *Jefferson* (1908), 1 Cr. App. Rep. 95; *R.* v. *George* (1908), 1 Cr. App. Rep. 168; *R.* v. *Gylee* (1909), 73 J. P. 72.

(*f*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 5 (3). See as to conviction being quashed on the ground of a wrong conclusion from findings by a jury, *R.* v. *Knight* (1908), 1 Cr. App. Rep. 186; *R.* v. *Muirhead* (1908), 1 Cr. App. Rep. 189.

(*g*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 5 (4). The defendant is to be kept in custody in the same manner as if a special verdict had been found by the jury under the Trial of Lunatics Act, 1883 (46 & 47 Vict. c. 38),

SECT. 1. The Court of Criminal Appeal.

839. If a court of assize or court of quarter sessions makes an order (*h*) ordering the parent or guardian of a child or young person to pay a fine, damages, or costs in respect of an offence committed by such child or young person, the parent or guardian may appeal against the order to the Court of Criminal Appeal, as if the parent or guardian had been convicted on indictment and the order were a sentence passed on his conviction (*i*).

Appeal against order on parent for offence committed by child.

840. The operation of an order made for the restitution of any property to any person made on a conviction on indictment and the operation of the statutory provisions (*j*) as to the revesting of the property in stolen goods on conviction are (unless the court before which the conviction takes place directs to the contrary in a case in which in their opinion the title to the property is not in dispute) suspended (1) in any case until the expiration of ten days after the date of conviction, and (2) where notice of appeal or leave to appeal is given within ten days after the date of conviction, until the determination of the appeal (*k*).

Suspension of order for restitution of property.

Where the operation of such order or of such statutory provisions is suspended until the determination of the appeal, the order is not to take effect as to the property, if the conviction is quashed on appeal. The court may annul or vary such an order, although the conviction is not quashed (*k*).

Order not to take effect if conviction quashed.

SECT. 2.—*Procedure.*

841. If a person convicted desires to appeal to the Court of Criminal Appeal or to obtain the leave of that court to appeal, he must within ten days of the date of conviction give notice of appeal in writing to the registrar of the Court of Criminal Appeal (*l*).

Notice of appeal.

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s. 2 ; see pp. 242, 373, *ante*. For an instance of a sentence being quashed under this section, see *R.* v. *Jefferson* (1908), 1 Cr. App. Rep. 95 ; compare *R.* v. *Harding* (1908), 1 Cr. App. Rep. 219 ; *R.* v. *Macdonald* (1908), 1 Cr. App. Rep. 262.

(*h*) See Children Act, 1908 (8 Edw. 7, c. 67), s. 99 (1).

(*i*) *Ibid.*, s. 99 (6) (b).

(*j*) *I.e.*, under Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 24.

(*k*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 6. The Act does not enable anyone to appeal against the order (*R.* v. *Elliott* (1908), 1 Cr. App. Rep. 15).

(*l*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 7 (1) ; Criminal Appeal Rules, 1908, r. 4. For form of notice of appeal, see schedule to these Rules, Forms 4, 5 ; of notice of application for leave to appeal, *ibid.*, Forms 6, 7). The notice must be signed by the appellant (r. 4 (a)) ; if the appellant cannot write, he may affix his mark in the presence of a witness, who is to attest the affixing of the mark (r. 4 (c)). If it is contended that the appellant was not responsible for his actions on the ground of insanity, the notice may be given and signed by his solicitor or other person authorised to act in his behalf (r. 4 (d)). If the appellant is a body corporate, the notice may be signed by the secretary, clerk, manager, or solicitor of the body corporate (r. 4 (e)). All notices required under the Act and the rules made under the Act are to be addressed to "The Registrar of the Court of Criminal Appeal, London" (r. 4 (a)), and are deemed to be duly given or sent, if forwarded by registered post addressed to the person to whom the notice is authorised or required to be given or sent (r. 4 (b)). The court will give leave to amend the notice of appeal, so that the real point at issue may be raised (*R.* v. *Meade* (1909), 2 Cr. App. Rep. 47 ; *R.* v. *Milburn* (1909), 2 Cr. App. Rep. 153). The

SECT. 2. Procedure.

The time within which notice of appeal or notice of an application for leave to appeal may be given may be extended at any time by the Court of Criminal Appeal, except in the case of a conviction involving sentence of death (*m*).

Suspension of execution of sentence.

842. If the appellant has been sentenced to death or corporal punishment, the sentence is not to be executed, until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given. If notice is given within such time, the appeal or application is to be heard and determined with as much expedition as practicable, and the sentence is not to be executed until after the determination of the appeal, or, where an application for leave to appeal is finally refused, until after such refusal (*n*).

Bail.

In the case of an appeal under the Act or under the Crown Cases Act, 1848 (*o*), an appellant may be admitted to bail by the court that tried him; if he has not been so admitted, he may after giving notice of appeal be admitted to bail by the Court of Criminal Appeal (*p*).

If he is not admitted to bail, he is, pending the determination of his appeal, to be treated in such manner as may be directed by prison rules made by the Secretary of State (*q*).

Judge's notes and report on the case.

843. In the case of an appeal or of an application for leave to appeal the judge or chairman of the court before whom an appellant was convicted must furnish to the registrar of the Court of Criminal Appeal, when required to do so by such registrar, his notes of the trial and a report giving his opinion upon the case or upon any point arising in the case (*r*).

Production of documents.

844. The Court of Criminal Appeal may order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to them necessary for the determination of the case (*s*).

Order for examination of

845. The court may order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the

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appellant may submit his case in writing for the consideration of the court, instead of by oral argument.

(*m*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 7 (1). Notice of application for extension of time must be signed and addressed in the same way as the notice of appeal (Criminal Appeal Rules, 1908, r. 4). For forms of notice of application for extension of time, see schedule to Rules, Form 9.

(*n*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 7 (2). As to notification of appeals and the result of appeals by the registrar, see Criminal Appeal Rules, 1908, rr. 34, 35, and schedule to Rules, Forms 29—32.

(*o*) 11 & 12 Vict. c. 78; see p. 413, *ante*.

(*p*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23, ss. 14 (2), 17; Criminal Appeal Rules, 1908, r. 29; and see *R.* v. *Ridley* (1909), 25 T. L. R. 508, C. C. A.

(*q*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 14 (1). See Rules of Secretary of State of 8th April, 1908 (Statutory Rules and Orders, 1908, p. 772), and *R.* v. *Ridley*, *supra*; *R.* v. *Gylee* (1909), 73 J. P. 72.

(*r*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 8; Criminal Appeal Rules, 1908, rr. 14—16.

(*s*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 9 (a).

court, or may order the examination of any such witnesses to be conducted in manner provided by rules of court before any judge of the court or before any officer of the court or justice of the peace or other person appointed by the court for the purpose, and allow the admission of any depositions so taken as evidence before the court (*t*).

compellable witnesses.

The court may, if they think fit, receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant in cases where such evidence could not have been given at the trial except on such application (*u*).

Reference of questions to special commissioner.

846. If any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation which cannot in the opinion of the court conveniently be conducted before the court, the court may order the reference of such question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the court and act upon the report of any such commissioner so far as they think fit to adopt it (*v*).

Appointment of assessor.

847. The court may also appoint any person with special expert knowledge to act as assessor to the court in any case where it appears to the court that such special knowledge is required for the proper determination of the case (*w*).

Other powers.

848. The court may exercise in relation to the proceedings any other powers which may for the time being be exercised by the Court of Appeal on appeals in civil matters, and may issue any warrants necessary for enforcing the orders of the court (*a*).

(*t*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 9 (b); Criminal Appeal Rules, 1908, rr. 40, 41, schedule to Rules, Forms 24—27. Applications for leave to call fresh evidence were granted in the following cases:—*R.* v. *Laws* (1908), 1 Cr. App. Rep. 6; *R.* v. *Betridge* (1908), 1 Cr. App. Rep. 236; *R.* v. *Farrington* (1908), 1 Cr. App. Rep. 113; *R.* v. *Hewson* (1908), 1 Cr. App. Rep. 47; *R.* v. *Sovosky* (1908), 1 Cr. App. Rep. 84; *R.* v. *Lovett* (1908), 1 Cr. App. Rep. 94; *R.* v. *Gerhold* (1908), 1 Cr. App. Rep. 104; *R.* v. *Osborne* (1908), 1 Cr. App. Rep. 133; *R.* v. *Gray* (1908), 1 Cr. App. Rep. 154; *R.* v. *Gowlett* (1908), 1 Cr. App. Rep. 204; *R.* v. *Martin* (1908), 1 Cr. App. Rep. 33; *R.* v. *East* (1908), 1 Cr. App. Rep. 183; *R.* v. *Dunton* (1908), 1 Cr. App. Rep. 165; *R.* v. *Donovan* (1909) 2 Cr. App. Rep. 1, 17; *R.* v. *Dickinson* (1909), 2 Cr. App. Rep. 78; *R.* v. *Jones* (1909), 2 Cr. App. Rep. 88; *R.* v. *Malvisi* (1909), 2 Cr. App. Rep. 192; *R.* v. *Williams* (1909), 2 Cr. App. Rep. 156. Leave will not be granted, unless very good reason is given for not calling the witnesses at the trial (*R.* v. *Mortimer* (1908), 1 Cr. App. Rep. 22; *R.* v. *Martin*, *supra*; *R.* v. *McGerlynchie* (1909), 2 Cr. App. Rep. 183; *R.* v. *Mack* (1909), 2 Cr. App. Rep. 114; *R.* v. *Perry* (1909), 2 Cr. App. Rep. 89; but see *R.* v. *Atkins* (1908), 1 Cr. App. Rep. 45; *R.* v. *Bradley* (1909), 2 Cr. App. Rep. 124; *R.* v. *Malvisi*, *supra*; *R.* v. *Donovan*, *supra*).

(*u*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 9 (c). In the absence of special circumstances the court will not grant leave to the appellant to give evidence, if he did not give evidence at the trial (*R.* v. *Rubens* (1909), 2 Cr. App. Rep. 163, 167).

(*v*) *Ibid.*, s. 9 (d); Criminal Appeal Rules, 1908, r. 41.

(*w*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 9 (e).

(*a*) *Ibid.*, s. 9; R. S. C., 1883, Ord. 59, r. 4. See title PRACTICE AND PROCEDURE.

SECT. 2. Procedure.

Sentence not to be increased in consequence of fresh evidence.

849. In no case is any sentence to be increased by reason of or in consideration of any evidence that was not given at the trial (*b*).

Assigning solicitor or counsel.

850. The Court of Criminal Appeal may at any time assign to an appellant a solicitor and counsel, or counsel only, in any appeal or proceedings preliminary or incidental to an appeal, if in the opinion of the court it is desirable in the interests of justice, and if the appellant has not sufficient means to enable him to instruct solicitor or counsel (*c*).

Presence of appellant at hearing of appeal.

851. An appellant, although he is in custody, is, if he desires it, entitled to be present on the hearing of his appeal, but not when the appeal is on a question of law alone or on an application for leave to appeal, or on any proceedings preliminary or incidental to an appeal, except where rules of court provide that he shall have the right to be present and the court give him leave to be present (*d*).

The court may pass any sentence which they are authorised to pass, although the appellant is not present (*e*).

Director of Public Prosecutions to undertake defence of appeals.

852. It is the duty of the Director of Public Prosecutions to appear for the Crown on every appeal under the Act, except where the solicitor of a Government department or a private prosecutor in the case of a private prosecution undertakes the defence of the appeal (*f*).

(*b*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23). s. 9.

(*c*) *Ibid.*, s. 10, and see s. 15 (5), and Criminal Appeal Rules, 1908, rr. 30, 37, and 38. On an appeal against sentence legal aid will only be granted in exceptional cases (*R.* v. *Crawley* (1908), 1 Cr. App. Rep. 4 ; *R.* v. *Peters* (1908), 1 Cr. App. Rep. 131). As to costs and expenses, see p. 448, *post.*

(*d*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 11 (1); Criminal Appeal Rules, 1908, r. 25, schedule to Rules, Forms 4, 5, 13, 14. In *R.* v. *Dunleavey*, [1909] 1 K. B. 200, the court refused, in the absence of the prisoner through illness, to proceed with the hearing of an appeal involving questions of fact at which the appellant had desired to be present; *semble*, the prisoner's counsel cannot waive the prisoner's right to be present (*ibid.*).

(*e*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 11 (2).

(*f*) *Ibid.*, s. 12 ; Criminal Appeal Rules, 1908, rr. 27, 28, schedule to Rules, Form 2. The Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), is to apply as though the duty of the Director of Public Prosecutions under the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 12, were a duty under the Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), s. 2 (Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 12). Provision is to be made by rules of court for the transmission to him of all such documents, exhibits, and other things connected with the proceedings as he may require for the purpose of his duties under the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 12. As to hearing counsel for the Crown on appeal against sentence, see *R.* v. *Standing* (1909), 2 Cr. App. Rep. 5. As to costs, see p. 448, *post.* See also Order of the Secretary of State of 27th March, 1908, [1908] W. N. p. 95 ; Order of the Secretary of State of 14th June, 1904 (Statutory Rules and Orders, 1904, pp. 117—122); Criminal Appeal Rules, 1908, r. 49, schedule to Rules, Form 28. Provision is to be made by rules within the meaning of the Prison Act, 1898 (61 & 62 Vict. c. 41), for the manner in which an appellant, when in custody, is to be brought to any place at which he is entitled to be present for the purposes of the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), or to any place to which the Court of Criminal Appeal, or any judge of that court, may order him to

Computation of term of sentence if appeal dismissed.

853. If an appeal has been dismissed, and the appellant was admitted to bail pending the determination of his appeal, the time during which he was admitted to bail is not to count as part of any term of imprisonment or penal servitude under his sentence (*g*).

If he is in custody and is specially treated as an appellant, the time during which he is so specially treated is not, unless the Court of Criminal Appeal otherwise order, to count as part of such term (*g*).

The term of imprisonment or penal servitude to which he is sentenced, either under the original sentence of the court below or under any substituted sentence of the Court of Criminal Appeal, is, unless that court otherwise order, to be deemed to be resumed or to run, if he is in custody, from the day on which the appeal is determined, and if he is not in custody, from the day on which he is received into prison under the sentence. Any time during which he was in custody and was not specially treated as an appellant is to count as a part of the term of imprisonment or penal servitude under the sentence (*g*).

Duties of registrar.

854. The registrar must take all necessary steps for obtaining a hearing of any appeals or applications notice of which is given to him under the Act, and must obtain and lay before the court in proper form all documents and exhibits and other things relating to the proceedings in the court before which the appellant was tried which appear necessary for the proper determination of any such appeal or application (*h*).

Summary determination of frivolous or vexatious appeal.

If any notice of appeal purporting to be on a ground which involves a question of law alone appears to the registrar not to show any substantial ground of appeal, he may refer the appeal to the court for summary determination, and thereupon, if the court consider that the appeal is frivolous or vexatious, and can be determined without adjourning it for a full hearing, the court may dismiss the appeal summarily, without calling on any persons to attend the hearing or to appear for the Crown (*i*).

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be taken for the purpose of any proceedings of that court, and for the manner in which he is to be kept in custody while absent from prison for the purpose; an appellant while in custody in accordance with those rules is to be deemed to be in legal custody (Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 14 (5)).

(*g*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 14 (3). If a case is stated under the Crown Cases Act, 1848 (11 & 12 Vict. c. 78) (see p. 433, *ante*), the person in relation to whose conviction the case is stated is to be treated as regards custody and term of imprisonment or penal servitude in the same way as an appellant under the Criminal Appeal Act, 1907 (see *ibid.*, s. 14 (4)). See, as to the date from which a sentence may be ordered to run, *R.* v. *Sidlow* (1908), 1 Cr. App. Rep. 28; *R.* v. *Boyd* (1908), 1 Cr. App. Rep. 64; *R.* v. *Gulston* (1908), 1 Cr. App. Rep. 165; *R.* v. *Randles* (1908), 1 Cr. App. Rep. 194; *R.* v. *East* (1908), 1 Cr. App. Rep. 205; *R.* v. *Hampshire* (1908), 1 Cr. App. Rep. 212; *R.* v. *Gray* (1908), 1 Cr. App. Rep. 225; *R.* v. *Dyer* (1909), 2 Cr. App. Rep. 174; *R.* v. *Gylee* (1909), 73 J. P. 72.

(*h*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 15 (1); Criminal Appeal Rules, 1908, rr. 2, 25, 32, 33. As to copies of documents for the use of an appellant or respondent, see *ibid.*, r. 39.

(*i*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 15 (2). For an instance of a summary determination of an appeal under this sub-section, see *R.* v. *Rye* (1909), 2 Cr. App. Rep. 155.

SECT. 2. Procedure.

Custody of documents.

855. Any documents, exhibits, or other things connected with the proceedings on the trial of any person on indictment who, if convicted, is entitled or may be authorised to appeal, are to be kept in the custody of the court of trial, in accordance with rules of court made for the purpose, for such time as may be provided by the rules, and subject to such power as may be given by the rules for the conditional release of any such documents etc. from that custody (*k*).

Forms to be furnished by registrar.

856. The registrar must furnish the necessary forms and instructions in relation to notices of appeal and application under the Act to any person who demands them, and to officers of courts, governors of prisons, and such other officers or persons as he thinks fit (*l*).

The governor of a prison must cause such forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application to the court, and cause any such notice given by a prisoner in his custody to be forwarded to the registrar (*l*).

Report of registrar as to assigning legal aid to appellant.

The registrar must report to a judge of the court any case in which it appears to him that a solicitor and counsel, or counsel only, ought to be assigned to an appellant, although no application has been made for the purpose (*m*).

Shorthand notes.

857. Shorthand notes are to be taken of the proceedings at the trial on indictment of any person who, if convicted, is entitled or may be authorised to appeal under the Act, and on any appeal or application for leave to appeal a transcript of the notes, or any part of such notes, is to be made, if the registrar so directs, and to be furnished to the registrar for the use of the court, and a transcript is to be furnished to any party interested upon the payment of such charges as the Treasury may fix (*n*).

Powers exercisable by a single judge.

858. Any judge of the Court of Criminal Appeal may exercise the powers given to the court to give leave to appeal, or to grant

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(*k*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 15 (3); Criminal Appeal Rules, 1908, rr. 8, 33, 36.

(*l*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 15 (4); Criminal Appeal Rules, 1908, r. 25, schedule to Rules, Forms 4—7, 9, 14, 26.

(*m*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 15 (5); Criminal Appeal Rules, 1908, r. 37.

(*n*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 16 (1). As to a transcript for the use of the Secretary of State, see *ibid.*, s. 16 (2); as to costs of taking shorthand notes and of a transcript, see *ibid.*, s. 16 (3); Criminal Appeal Rules, 1908, r. 5. Shorthand notes are to be taken of the evidence at the trial, of any objections taken in the course of the trial, of any statement made by the prisoner, of the summing-up and sentence of the judge, but, unless the judge at the trial otherwise orders, not of any part of the speeches of counsel or solicitor (Criminal Appeal Rules, 1908, r. 52; see [1908] W. N. 94). The provision in s. 16 as to shorthand notes is merely directory, and the taking of such notes or of sufficient notes is not essential to the validity of the proceedings (*R.* v. *Rutter* (1908), 1 Cr. App. Rep. 174; *R.* v. *Elliott* (1909), 2 Cr. App. Rep. 171). In *R.* v. *Bennett* (1909), 2 Cr. App. Rep. 182, when there were no shorthand notes, the court accepted instead the statement of counsel for the appellant, who was present at the trial. In the case of a discrepancy between the judge's notes and the shorthand notes, the court will prefer the judge's notes (*R.* v. *Beauchamp* (1909), 2 Cr. App. Rep. 40).

extension of time for notice of appeal, or for application for leave to appeal, or to assign legal aid to an appellant, or to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, or to admit an appellant to bail (*o*).

If a judge of the court refuses any application of an appellant, the appellant may have the application determined by the full court of not less than three judges (*o*).

References to the Court by Secretary of State.

859. The Act does not affect the prerogative of mercy, but the Secretary of State, on the consideration of any petition for the exercise of such prerogative with reference to the conviction of a person on indictment or to the sentence (other than sentence of death) passed on a person so convicted, may at any time refer the whole case to the court, and the case is then to be heard and determined by the court as in the case of an appeal by a person convicted; or the Secretary of State may refer any point arising in such a case to the court for their opinion, and the court are to consider the point so referred and furnish the Secretary of State with their opinion (*p*).

Convictions to which the Act applies.

860. The Act applies to convictions on criminal informations and coroners' inquisitions, and to orders made by a court of quarter sessions in respect of an incorrigible rogue, in the same way as the Act applies to convictions on indictments (*q*).

The Act does not apply to convictions on indictments or inquisitions charging any peer or peeress, or other person claiming the privilege of peerage, with any offence not triable by a court of assize (*a*).

(*o*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 17; Criminal Appeal Rules, 1908, rr. 25, 42 (b); a single judge may refer applications to the full court, see *R.* v. *Munns* (1908), 1 Cr. App. Rep. 4, at p. 5. As to notice of application for bail, see *R.* v. *Ridley* (1909), 25 T. L. R. 508, C. C. A.

(*p*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 19; Criminal Appeal Rules, 1908, rr. 48, 51. The power which s. 19 of the Act gives to the Secretary of State of referring either "the whole case" or any "point arising in the case" to the court, and the power of the court to hear and determine the whole case or to consider any point so referred and to furnish their opinions to the Secretary of State are limited to convictions on indictment, but in *R.* v. *Johnson* [1909], 1 K. B. 439, C. C. A., the Secretary of State referred to the court under s. 19 (a) a conviction not on indictment, and the court heard and determined the case and quashed the sentence, though they were bound to hold that, while the conviction was wrong, they had in that particular case no power to deal with the conviction. If the Secretary of State refers a point to the court for their opinion, the court, unless they otherwise determine, are to consider the point in private (Criminal Appeal Rules, 1908, r. 51).

(*q*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20 (2). See the Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 5. No appeal under the Act lies from the conviction of an incorrigible rogue at petty sessions; the only appeal is against the sentence passed at quarter sessions (*R.* v. *Brown* (1908), 1 Cr. App. Rep. 85; *R.* v. *O'Brien* (1909), 2 Cr. App. Rep. 193; *R.* v. *Edwards* (1909), 2 Cr. App. Rep. 79). In one case an order made at quarter sessions on a conviction at petty sessions was referred to the court under s. 19 of the Act (*R.* v. *Johnson* (1909), 2 Cr. App. Rep. 13), and the court heard and determined the case, *sed quære* (see note (*p*).

(*a*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20 (2). As to indictments etc. against peers etc., see p. 266, *ante*.

SECT. 2. **Procedure.**

Indictments for non-repair etc. of highways.

An appeal to the Court of Criminal Appeal does not lie in the case of convictions on indictments at common law in relation to the non-repair or obstruction of a highway, public bridge, or navigable river. An appeal from such a conviction lies in all respects as if the conviction were a verdict in a civil action tried at assizes (*b*).

SECT. 3.—*Pardon.*

Royal pardon.

861. The royal prerogative of mercy may be exercised irrespectively of any appeal and after the failure of an appeal to the court (*c*). Any punishment for any crime may, except where a statute otherwise expressly provides (*d*), be remitted by the Sovereign, and any crime punishable by criminal process in England may be pardoned by him at any time both after and before judgment (*e*).

Besides a royal pardon under the Great Seal or under the sign manual there may be a pardon by an Act of Parliament (*f*).

(*b*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 20 (3). See addition to r. 17 of the Crown Office Rules, 1906, [1908] W. N. p. 165. An appeal from such a conviction is to be set down and entered at the Crown Office, and if the indictment has not already been removed into the King's Bench Division for the purpose of trial, a writ of *certiorari* is to issue on the setting down of the appeal to remove the indictment into the King's Bench Division for the purpose of appeal to the Court of Appeal without any order or recognisance (*ibid.*).

(*c*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 19.

(*d*) See Habeas Corpus Act, 1679 (31 Car. 2, c. 2), s. 11, which provides that anyone who commits, detains etc. any person contrary to the Act is to suffer the penalties of *præmunire*, and is to be disallowed from bearing any office of trust in England and incapable of any pardon from the King in respect of such forfeitures and disabilities.

(*e*) For pardon, generally, see title CONSTITUTIONAL LAW, Vol. VI., p. 404.

(*f*) See *R.* v. *Crosby* (1695), 12 State Tr. 1291; *R.* v. *Rookwood* (1696), 13 State Tr. 186. As to the effect of a colonial Act of Indemnity, see *Phillips* v. *Eyre* (1868), L. R. 4 Q. B. 225; (1870), L. R. 6 Q. B. 1, Ex. Ch.

Part IX.—Costs, Compensation, and Rewards.

SECT. 1.—*Order for Costs.*

SECT. 1. Order for Costs.

Costs in Criminal Cases Act, 1908.

862. The payment of costs in criminal proceedings, except when an indictment has been removed by *certiorari*, depends entirely upon statute, and is governed by the Costs in Criminal Cases Act, 1908.

Payment of costs of prosecution or defence out of local funds.

863. A court of assize or court of quarter sessions before which any indictable offence (except an offence in relation to the non-repair or obstruction of any highway, public bridge, or navigable river) is prosecuted or tried may direct the payment of the costs of the prosecution or defence or both out of the funds of a county borough, if the offence is committed or supposed to have been committed in a county borough, and in other cases out of the county fund of the administrative county in which the offence was committed or was supposed to have been committed (*g*).

Amount of costs.

864. The amount of costs the payment of which the court can order is, subject to the regulations made by the Secretary of State (*h*), such an amount as appears to the court reasonably sufficient to compensate the prosecutor for the expenses properly incurred by him in carrying on the prosecution and to compensate any person properly attending to give evidence for the prosecution or defence, or called to give evidence at the instance of the court, for the expense, trouble, or loss of time properly incurred in or incidental to such attendance and giving of evidence (*i*).

(*g*) Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), ss. 1, 4, 9 (3). As to county boroughs and administrative counties, see title LOCAL GOVERNMENT. The costs ordered under this Act with regard to offences committed within the jurisdiction of the Admiralty of England (see p. 273, *ante*) are to be paid out of the funds of the county or county borough where the defendant is tried, and if he is tried at the Central Criminal Court, out of the funds of the county of London, but any costs paid in such cases out of the funds of a county or county borough are to be repaid out of moneys provided by Parliament (*ibid.*, s. 4 (1)). In prosecutions relating to the non-repair or obstruction of any highway, public bridge, or navigable river costs may be allowed as in civil proceedings, as if the prosecutor or defendant were plaintiff or defendant in such proceedings (Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 9 (3)). The effect of this is that in all such cases where the jury give a verdict, costs follow the event, unless the judge who tries the case shall for good cause otherwise order (R. S. C., 1883, Ord. 65, r. 1). As to costs in proceedings before justices, see Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 1 (1) (b), and title MAGISTRATES.

(*h*) As to the making of such regulations, see Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 5, and for the regulations see [1908] W. N., Part II., p. 343, and [1909] W. N., Part II., p. 3.

(*i*) *Ibid.*, s. 1 (2). The costs which may be ordered in the case of the prosecutor will include the costs of solicitor and counsel. Such costs cannot, it seems, be allowed in the case of the defence, except where the defendant has obtained a certificate for legal aid under the Poor Prisoners Defence Act, 1903 (3 Edw. 7, c. 38). In such a case the costs of the defence which may be ordered to be paid include the fees of solicitor and counsel, the costs of a copy of the depositions, and any other expenses properly incurred in carrying on the defence (Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 1 (3)). In other cases the costs

SECT. 1. Order for Costs.

Ascertainment of amount. Order for payment.

The amount of costs directed to be paid must be ascertained as soon as practicable by the proper officer of the court, and as soon as the amount is ascertained the proper officer is to make out and deliver to the person in whose favour the order has been made, or to any person who appears to the proper officer to be acting on behalf of that person, an order upon the treasurer of the county or borough out of the funds of which the costs are payable for the payment of that amount (*a*).

Payment.

865. The treasurer of any county or county borough on whom such order is made must upon sight of the order pay out of the county fund or borough fund or rate to the person named in the order or his duly authorised agent the sums specified in the order, and must be allowed such sums in his accounts (*b*).

Attendance of treasurer of county council or county borough.

For the purpose of the payment of such sums the council of every county and of every county borough must cause their treasurer, or some other person on his behalf, to attend at every court of assize or quarter sessions at which any indictable offence is to be tried in respect of which an order as to costs can be made on the treasurer, and to remain in attendance for that purpose during the sitting of the court, or until such hour as the court shall direct (*c*).

Regulations of Secretary of State.

866. A Secretary of State may make regulations generally for carrying the Act (*d*) into effect, and in particular with respect to the rates or scales of payment of any costs which are payable out of local funds and the conditions under which any such costs may be allowed, the manner in which an officer of the court making any payment on account of costs to any person in respect of his attendance to give evidence is to be reimbursed out of local funds, and the form of orders, certificates and notices under the Act, and the furnishing of information, when certificates are forwarded by officers of courts of summary jurisdiction or of examining justices (*e*).

Order on convicted person to pay costs.

867. The court by or before which any person is convicted of an indictable offence may, if they think fit, in addition to any

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payable to the defence seem to be limited to the expenses of witnesses (*ibid.*, s. 1 (2)). Expenses of witnesses to character, whether for the prosecution or the defence, are not allowed at a court of assize or quarter sessions, unless the court shall otherwise order (Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 1 (4)). The examining justices (see p. 328, *ante*) may as regards the preliminary investigation of an indictable offence direct the payment of the costs of the prosecution or defence, or both, out of the funds of the county or borough in the same way as a court of assize or quarter sessions (*ibid.*, ss. 1, 3).

(*a*) *Ibid.*, ss. 1 (2), 2. The order of a court of assize or quarter sessions is to include the amount of costs directed to be paid by the examining justices, and certified by them, in respect of the proceedings before them (*ibid.*, s. 3). The proper officer is the clerk of the peace in the case of quarter sessions or the clerk of assize in the case of assizes, or a deputy of either.

(*b*) *Ibid.*, s. 4 (2).

(*c*) *Ibid.*, s. 4 (3). As to adjustment of financial relations between any counties and boroughs, when any change is brought about by the Act, see s. 4 (4).

(*d*) Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15).

(*e*) *Ibid.*, s. 5. Regulations have been made. See [1908] W. N., Part II., p. 343; [1909] W. N., Part II., p. 3.

other punishment order the person convicted to pay the whole or any part of the costs incurred in or about the prosecution and conviction, including any proceedings before the examining justices, as taxed by the proper officer of the court (*f*).

Order that prosecution shall pay costs of person acquitted.

868. In certain cases (*g*), when a person has been acquitted on an indictment or information by a private prosecutor, the court before which the person acquitted is tried may order the prosecutor to pay the whole or any part of the costs incurred in or about the defence, including any proceedings before the examining justices, as taxed by the proper officer of the court.

An order for the payment of costs by the person convicted or the prosecutor may be made in addition to an order directing payment of costs out of local funds.

Enforcement of order for payment of costs.

869. Where an order directing payment out of local funds is made, the costs are primarily payable out of local funds, but notice of any order for the payment of costs by the person convicted or by the prosecutor must be sent to the council of the county or borough out of the funds of which the costs are primarily payable (*h*). Such an order may be enforced by the council of the county or borough out of the funds of which the costs have been paid in the same manner as an order for the payment of costs made by the High Court in civil proceedings (*i*), or as a civil debt before a court of summary jurisdiction (*k*).

(*f*) Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 6 (1).

(*g*) *Ibid.*, s. 6 (2). Such an order can only be made where (1) a person is acquitted on an indictment or information by a private prosecutor (a) for publication of a defamatory libel, (b) for any offence against the Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), (c) or any corrupt practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), (d) for an offence under the Merchandise Marks Acts, 1887—1894 (50 & 51 Vict. c. 28, 54 & 55 Vict. c. 15, 57 & 58 Vict. c. 19); or (2) on an indictment presented to a grand jury under the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), where the person acquitted has not been committed to or detained in custody or bound by recognisance to answer the indictment. If a person is charged with an indictable offence and the justices, acting under the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), dismiss the charge, and they are of opinion that the charge was not made in good faith, they may order the prosecutor to pay the whole or any part of the costs incurred in or about the defence; if the amount ordered to be paid by such justices exceeds £25, the prosecutor may appeal against the order to a court of quarter sessions in the manner provided by the Summary Jurisdiction Acts (11 & 12 Vict. c. 43, 42 & 43 Vict. c. 49, 47 & 48 Vict. c. 43) (see title MAGISTRATES), and no proceedings are to be taken upon the order, until either the time within which the appeal can be made has elapsed without an appeal being made or, if an appeal is made, until the appeal is determined or abandoned (Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 6 (3)). If a person has been committed for trial for an indictable offence, or a prosecutor has been bound over to prosecute under the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), and the person is not ultimately tried, the court to which he is committed, or at which the prosecutor is bound over to prosecute, may order payment of costs as if he had been tried and acquitted (Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), ss. 7, 9 (2)).

(*h*) *Ibid.*, s. 6 (4).

(*i*) See R. S. C., 1883, Ord. 42, rr. 3, 4, and title PRACTICE AND PROCEDURE.

(*k*) Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 6 (5). See title MAGISTRATES.

SECT. 1. Order for Costs.

The person to whom the costs have been ordered to be paid by the prosecutor or defendant may recover them in the same manner (*l*).

If a person who is convicted has been ordered to pay costs, the order may be enforced out of any money taken from him on his apprehension, so far as the court so directs (*l*).

Costs in case of an incorrigible rogue.

870. The foregoing provisions with regard to the payment of costs in criminal cases apply to the case of a person committed as an incorrigible rogue (*m*), as though such person were committed for trial for an indictable offence (*n*). In the case of an appeal by such person to quarter sessions (*o*) such provisions apply as though the hearing of the appeal were the trial of an indictable offence (*p*).

Costs in the Court of Criminal Appeal.

Hearing of case stated.

871. On the hearing of an appeal to the Court of Criminal Appeal no costs are to be allowed on either side (*q*).

The hearing by the Court of Criminal Appeal of a case stated (*r*) is to be deemed, so far as relates to costs, to be the hearing of an appeal (*s*). The court of assize or quarter sessions which states a case (*a*) has no power to direct that the costs of the hearing of the case before the Court of Appeal shall be paid out of local funds (*b*).

Expenses of solicitor and counsel assigned to prisoner who appeals, and of witnesses examined on appeal.

872. The "expenses" of solicitor and counsel assigned to an appellant under the Criminal Appeal Act, 1907 (*c*), and of any witnesses who attend on the order of the court, or who are examined in any proceedings incidental to the appeal and of the appearance of an appellant on the hearing of his appeal or on any proceedings preliminary or incidental to the appeal, and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the court for the purpose, are to be defrayed up to an amount allowed by the Court of Criminal Appeal out of the county or county borough funds in the same way as the costs of a prosecution (*d*).

(*l*) Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 6 (5). If the person convicted becomes bankrupt after his apprehension, but before his conviction, an order under this section is valid notwithstanding the bankruptcy, provided no act of bankruptcy was committed before the apprehension (*R.* v. *Roberts* (1873), L. R. 9 Q. B. 77).

(*m*) Under the Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 5.

(*n*) Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 9 (4).

(*o*) Under the Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 14.

(*p*) Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 9 (4).

(*q*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 13 (1).

(*r*) Under the Crown Cases Act, 1848 (11 & 12 Vict. c. 78).

(*s*) Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 9 (5).

(*a*) Under the Crown Cases Act, 1848 (11 & 12 Vict. c. 78).

(*b*) Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 9 (5).

(*c*) 7 Edw. 7, c. 23.

(*d*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 13 (2); Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 9 (5). The expenses of the examination of witnesses by a person appointed by the court for that purpose, and of a reference to a special commissioner, and of an assessor under the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 9 (b), (d), (e), are provided for in the same way (*ibid.*, s. 13 (2)).

The payment of such expenses of an appellant does not depend on any order of the court, but is subject to taxation (*e*).

There is no provision as to the payment of the costs or expenses of a respondent in an appeal to the Court of Criminal Appeal.

Provisions of costs in Criminal Cases Act supersede all other statutory provisions as to costs.

The foregoing provisions as to the payment of costs in criminal cases out of local funds are substituted for all other statutory provisions for the payment of expenses in the case of any indictment for felony or for misdemeanour (*f*).

SECT. 2.—*Compensation and Rewards.*

Order for compensation of person injured by a felony.

873. If any person has been convicted of felony, the court before which he is tried may upon the application of any person aggrieved and immediately after the conviction award any sum of money, not exceeding £100, to be paid by the convicted felon by way of satisfaction or compensation for any loss of property suffered through or by means of the felony (*g*).

Order for payment of rewards to persons who have been active in the apprehension of offenders.

874. In the case of certain offences (*h*) an order may be made on the sheriff of the county for the payment of sums of money to the person or persons who shall appear to the court to have been active in the apprehension of the offender charged; the sum is to be such as to the court seems reasonable and sufficient to compensate such person for his expenses, exertions, and loss of time in or towards such apprehension (*i*).

Compensation to relatives.

875. If a man is killed in endeavouring to apprehend any person charged with any of such offences, the court before whom the person charged is tried may order the sheriff of the county to pay to the widow of the man, if he leaves a widow, or to his child or children, if his wife is dead, or if he leaves neither widow nor child, to his father or mother, such sum of money as to the court may seem meet (*k*).

(*e*) Criminal Appeal Act, 1907 (7 Edw. 7, c. 23, s. 13 (2)).

(*f*) Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), s. 9 (6).

(*g*) Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 4. The order is enforced in the same way as an order for costs under the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15); see *ibid.*, s. 9 (6), and schedule repealing s. 3 of the Forfeiture Act, 1870.

(*h*) Murder, felonious shooting or attempting to discharge loaded firearms, stabbing, cutting, poisoning, administering anything to procure miscarriage, rape, burglary, housebreaking, robbery on the person, horse-stealing, bullock-stealing, sheep-stealing, being accessory before the fact to any of these offences, receiving stolen property (Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 28).

(*i*) *Ibid.* The compensation is to be in addition to the costs allowed such persons as witnesses. The orders may be made by a court of oyer and terminer or of general gaol delivery, and by a court of quarter sessions in respect of offences which that court has power to try; but a court of quarter sessions cannot award a larger sum than £5 for compensation to any one person (Criminal Justice Administration Act, 1851 (14 & 15 Vict. c. 55), s. 8). The sum ordered is paid by the sheriff, who is afterwards recouped by the Treasury (Criminal Law) Act, 1826 (7 Geo. 4, c. 64), s. 29).

(*k*) Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 30. The sheriff is to pay the sum ordered and to be recouped by the Treasury (*ibid.*).

Part X.—Offences against the Government.

SECT. 1. Offences against the Sovereign.

SECT. 1.—*Offences against the Sovereign.*

SUB-SECT. 1.—*High Treason.*

Acts that constitute high treason.

876. Every person is by statute guilty of high treason who (*l*) :—

(1) Compasses or imagines the death, or any bodily harm tending to the death, maiming or wounding, imprisonment or restraint of the King, or the death of the Queen Consort, or of their eldest son and heir (*m*).

(2) Violates the Queen Consort or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir (*n*).

(3) Levies war against the King in his realm, or is adherent to the King's enemies in his realm, or gives them aid or comfort in the realm or elsewhere (*o*).

(4) Slays the Chancellor, Treasurer, or the judges of the High Court of Justice, or justices of assize or of oyer and terminer, being in their places and doing their offices (*p*).

(5) Endeavours to deprive or hinder the person next in succession to the Crown under the Act of Settlement (*q*) from succeeding, or, by writing or printing, maintains that any other person is entitled to the Crown (*r*).

Allegiance.

877. The essence of the offence of treason lies in the violation of the allegiance which is owed to the King. This allegiance is owed not only by subjects of the King, but also by an alien living in this country and receiving the protection of its laws, so long as he is resident here, even if the State to which he belongs is at

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(*l*) For treason generally see also title CONSTITUTIONAL LAW, Vol. VI., p. 345. High treason was so called in contrast to an offence which formerly was called petit treason, namely:—the killing of a master by his servant, of a husband by his wife, of an ecclesiastical person by his inferior (Treason Act, 1351 (25 Edw. 3, stat. 5, c. 2); 4 Bl. Com. 75, 203). There is now no such offence as petit treason, the offence which formerly amounted to petit treason having been by statute declared to be murder only and no greater offence (Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 8).

(*m*) Treason Act, 1351 (25 Edw. 3, stat. 5, c. 2); Treason Act, 1795 (36 Geo. 3, c. 7), s. 1, made perpetual by the Treason Act, 1817 (57 Geo. 3, c. 6), s. 1; see the Treason Felony Act, 1848 (11 & 12 Vict. c. 12), s. 1, and p. 457, *post*.

(*n*) Treason Act, 1351 (25 Edw. 3, stat. 5, c. 2). See title CONSTITUTIONAL LAW, Vol. VI., p. 349.

(*o*) *Ibid.*

(*p*) *Ibid.* The Treason Act, 1351 (25 Edw. 3, stat. 5, c. 2), refers to the slaying of "the King's justices of the one bench or the other," *i.e.*, the judges of the King's Bench or the Court of Common Pleas. These are now represented by the judges of the High Court of Justice (King's Bench Division). A doubt has been expressed whether the Act would include judges of the Chancery Division (Stephen, Digest of the Criminal Law, 5th ed., 45). "Chancellor" means Lord High Chancellor, "Treasurer" Lord High Treasurer, but there has been no Lord High Treasurer since 1714, since which date the office has always been in commission (Anson, Law and Customs of the Constitution, Vol. II., Part I., 176).

(*q*) Stat. (1700) 12 & 13 Will. 3, c. 2.

(*r*) Stat. (1702) 1 Ann., stat. 2, c. 21, s. 3; Succession to the Crown Act, 1707 (6 Ann. c. 41), s. 1. See title CONSTITUTIONAL LAW, Vol. VI., p. 350.

war with the King (*a*). If an alien has lived in this country under the protection of the law, and the State of which he is a subject invades the King's territory and the alien assists the invader, the alien is guilty of treason (*b*).

Ambassadors

Ambassadors and persons attached to embassies are, it seems, only amenable to the laws of this country for treason if they are subjects of this country (*c*).

Punishment

The punishment for treason is death by hanging, but the King may substitute beheading for hanging (*d*).

(i.) *Compassing the Death of the King.*

Overt acts

878. The treason of compassing or imagining the death of the King, and, indeed, all treasons, must be proved (*e*) by overt, *i.e.*, open, acts (*f*). It is an overt act of compassing the King's death, within the meaning of the statutes, wilfully and deliberately to do or attempt anything whereby the King's life may be endangered. It is therefore an overt act of the treason of compassing the death of the King to enter into measures for deposing or imprisoning him, or to place his person in the power of conspirators against him, or to agree with foreigners to invade his dominions with force, or to go into a foreign country for that end, or to levy or conspire to levy war against him, or to raise an insurrection against him, or to destroy or conspire to destroy the constitution of the country (*g*).

It is an overt act of treason to meet with others and consult how to kill the King, though no agreement be then come to, or to enter into a treasonable correspondence with the enemy, although the

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(*a*) Fost. 185; 1 East, P. C. 52; Kel. 38; *R.* v. *De la Motte* (1781), 21 State Tr. 687, at p. 814. As to allegiance, see title CONSTITUTIONAL LAW, Vol. VI., pp. 341 *et seq.*

(*b*) *De Jager* v. *A.-G. of Natal*, [1907] A. C. 326, P. C.

(*c*) Fost. 187; 1 Hale, P. C. 95; 1 Hawk. P. C. 86; 1 Bl. Com. 253. See *Story's Case* (1571), 3 Dyer, 300, b; 1 State Tr. 1087; *R.* v. *Owen* (1616), 1 Roll. Rep. 185; Treatise upon the Law of High Treason by a Barrister-at-Law (ed. 1793), 8. Owing to the fiction of exterritoriality an ambassador who is not a subject of the State to which he is accredited does not owe even temporary allegiance to that State.

(*d*) Treason Act, 1790 (30 Geo. 2, c. 48), s. 1; Treason Act, 1814 (54 Geo. 3, c. 146), ss. 1, 2; Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 1; and see title CONSTITUTIONAL LAW, Vol. VI., p. 352. As to the disqualifications which follow upon a conviction for treason or felony, see p. 428, *ante*. Treason is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1). As to misprision of treason, see p. 503, *post*.

(*e*) 3 Co. Inst. 12. An overt act may consist in any course, act, measure or means whatever done, taken, used or assented to, towards, and for the purpose of effecting a traitorous intention; it includes any act of conspiracy, conferring or consulting with or advising, persuading, counselling, commanding or inciting any person (*per* ALDERSON, B., in his charge to the grand jury at Liverpool Assizes, December, 1848, 6 State Tr. (N. S.) at p. 1133). See also p. 233, *ante*.

(*f*) Treason Act, 1351 (25 Edw. 3, stat. 5, c. 2); Treason Act, 1796 (36 Geo. 3, c. 7), s. 1. See p. 456, *post*.

(*g*) Fost. 195—197, 210; 1 Hale, P. C. 108—128, where the more ancient authorities are fully cited; *R.* v. *Hardy* (1794), 24 State Tr. 201. *R.* v. *Freind* (1696), 13 State Tr. 1; *R.* v. *Charnock* (1696), 12 State Tr. 1377; *R.* v. *Rookwood* (1696), 13 State Tr. 139; *R.* v. *Thistlewood* (1820), 33 State Tr. (N. S.) 681, 685.

SECT. 1. Offences against the Sovereign.

letters which constitute the correspondence are intercepted and never delivered (*h*).

Writings which import a compassing of the King's death may be alleged as overt acts to support an indictment, provided they are published (*i*).

Loose words, not relative to any act or design, although they may be in contempt of the King's person and may charge him with vicious or foolish conduct, are not overt acts (*k*). But arguments and words of advice or persuasion, uttered in contemplation of some traitorous purpose actually on foot or intended, and in prosecution of it, and consulting together for such a purpose, are such overt acts (*l*).

An act which constitutes another species of treason (*e.g.*, levying war) may be alleged as an overt act of compassing the death of the King (*m*). But a constructive levying of war is not an overt act of this species of treason (*n*).

(ii.) *Levying War.*

Levying war against the King.

879. The levying of war (*a*) must be by acts done within the realm, which formerly included only England and Wales and so much of the seas adjacent as came within the body of a county (*b*). The effect of later statutes is to extend the provisions of the Act to Scotland (*c*) and Ireland (*d*), but not to the Channel Islands or the colonies (*e*).

(*h*) *R.* v. *Hensey* (1758), 19 State Tr. 1342.

(*i*) 1 Hale, P. C. 118; Fost. 198. In *R.* v. *Peacham* (1615), 2 State Tr. 870, the prisoner was convicted upon evidence that a treasonable sermon had been found in his study, though it had not been preached. Many of the judges being of opinion that this was not treason, he was not executed (see Fost. 198). In *R.* v. *Algernon Sidney* (1683), 9 State Tr. 817, the prisoner was convicted on evidence of a document found in his house and was executed; the conviction was afterwards reversed by Act of Parliament (9 State Tr. 896), but on the ground that it was not proved that the document was in the prisoner's handwriting. *R.* v. *Sidney*, *supra*, cannot now be regarded as an authority, see 1 Hale, P. C., ed. by Emlyn, 118, n. (h). But documents, even if not published, may be evidence of treason, if they are connected with other treasonable practices charged in the indictment (Fost. 198). See *R.* v. *Preston* (*Lord*) (1691), 12 State Tr. 645, 709; *R.* v. *Gregg* (1708), 14 State Tr. 1371, 1375; *R.* v. *Layer* (1722), 16 State Tr. 93, 205; *R.* v. *Hensey*, *supra*.

(*k*) *R.* v. *Pine* (1628), 3 State Tr. 359.

(*l*) Fost. 200; *R.* v. *Charnock* (1698), 12 State Tr. 1377, at col. 1452; *R.* v. *Parkyns* (1696), 13 State Tr. 63, 132.

(*m*) *R.* v. *Hensey*, *supra*, at p. 1344.

(*n*) Fost. 213; 1 Hale, P. C. 123; *R.* v. *Darrel* (1716), 10 Mod. Rep. 321. As to what constitutes a constructive levying of war, see p. 453, *post*.

(*a*) Namely, that which is punishable under the Treason Act, 1351 (25 Edw. 3, stat. 5, c. 2).

(*b*) See p. 271, *ante*, as to criminal jurisdiction generally.

(*c*) Treason Act, 1708 (7 Ann. c. 21), s. 1.

(*d*) Stat. (1494) 10 Hen. 7, c. 22; *R.* v. *Smith O'Brien* (1849), 7 State Tr. (N. S.) 1, 347, 375.

(*e*) 1 Hale, P. C. 155. But a person committing acts of war in any part of the King's dominions or abroad in conjunction with a foreign enemy would be guilty of the treason of adhering to the King's enemies. See *R.* v. *Vaughan* (1696), 13 State Tr. 485; *R.* v. *Lynch* (1902), Shorthand Notes, 3, 107, 116.

The levying of war must be against the King, and an attack upon private persons for a private end is not, whatever tumult be occasioned, a levying of war upon the King (*f*).

What acts amount to levying war.

880. To constitute a levying of war it is not necessary that blows should be struck; there must be *bellum levatum*, but not necessarily *bellum percussum*. It is sufficient, if there is an arming and arraying in warlike manner, as by enlisting and marching troops, or if there is an assembling in great numbers with warlike intent, or a cruising in a ship with the like intent (*g*). A bare conspiracy or consultation with a view to a levying of war, though it may in some cases amount to an overt act of compassing the King's death, is not a levying of war against him (*h*).

Number not material.

881. A small number of persons may be guilty of levying war against the King, if such persons are preparing to use violent measures in carrying out their purpose, as, *e.g.*, by the use of explosives with a treasonable intent (*i*). If large numbers are assembled with a treasonable purpose, it is the purpose of the assembly which constitutes treason and distinguishes it from riot (*k*).

Direct levying of war.

Constructive.

882. The levying of war may be of two kinds—(1) express and direct, as raising war against the King or his forces, or with a view to surprise or injure the King's person, or to imprison him, or to force him to remove any of his ministers or counsellors, and the like; or (2) constructive, as when there is a rising for some general public purpose, as to effect an alteration of the law, or to alter religion established by law, or to throw down all inclosures, or to open all prisons, or to pull down all meeting-houses (*l*). A person who takes part in any such acts, even though he had not previously any formed intention of taking part in them, is guilty of treason (*m*).

Private rights

A rising to maintain a private claim of right, or to destroy particular inclosures or to remove private nuisances, or to break prisons in order to release particular persons (unless such persons are imprisoned for treason), or to destroy the machinery of a

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(*f*) Fost. 208; 1 Hale, P. C. 131; see also Treason Act, 1351 (25 Edw. 3, stat. 5, c. 2).

(*g*) Fost. 208; 1 Hale, P. C. 131, 144; *R.* v. *Vaughan* (1696), 13 State Tr. 485, 532; *R.* v. *Dammaree* (1710), 15 State Tr. 522, 606. See also title CONSTITUTIONAL LAW, Vol. VI., p. 348.

(*h*) 1 Hale, P. C. 131.

(*i*) *R.* v. *Gallagher* (1883), 15 Cox, C. C. 291, 315, 317. See *R.* v. *Deasy* (1883), 15 Cox, C. C. 334.

(*k*) *R.* v. *Hardie* (1820), 1 State Tr. (N. S.) 610, 765.

(*l*) Fost. 210, 213; 1 Hale, P. C. 131; *R.* v. *Dammaree*, *supra*; *R.* v. *Purchase* (1710), 15 State Tr. 651, 699; *R.* v. *Gordon* (1781), 21 State Tr. 485, 644; *R.* v. *Thistlewood* (1820), 33 State Tr. 681, 684, 955.

(*m*) *R.* v. *Purchase*, *supra*; 1 East, P. C. 102. But a person who is merely present without committing any particular act of force cannot be convicted of constructively levying war (*R.* v. *Messenger* (1668), 6 State Tr. 879, 913). As to rescuing or permitting the escape of a person in prison for treason, see note (*k*) on p. 455, *post*, and p. 511, *post*.

SECT. 1. Offences against the Sovereign.

particular trade, does not amount to a levying of war within the meaning of the statute (*n*).

Joining rebels.

883. In an actual insurrection it is a levying of war to join with rebels in an act of rebellion. But if a person joins with rebels from force or from fear of death at their hands, and if he takes the first opportunity to escape from them, he will be excused, provided compulsion continued during substantially the whole of the time he remained with the rebels to such an extent that he may be presumed to have continued with them against his will (*o*).

An apprehension, however well grounded, of loss or destruction of property will not excuse one who joins with rebels; and compulsion and fear are no excuse for any other act of treason than that of joining with rebels or enemies (*o*).

Service in war under the King *de facto* is not an act of treason against the King *de jure* (*p*).

(iii.) *Adherence to the King's Enemies.*

Adherence to the King's enemies.

884. Adherence to the King's enemies must be evidenced by an overt act. Such adherence may be either within the realm or elsewhere (*q*).

The King's enemies are foreign States in actual hostility against him. Whether a particular State is in actual hostility or not is a question of fact for the jury, who may judge of the matter from public notoriety (*r*). It is not necessary that there should have been any formal declaration of war (*s*).

Acts of adherence.

885. A person adheres to the King's enemy who, in conjunction with the enemy, commits hostile acts upon the King's ally who is also at war with the King's enemy (*a*).

If the subject of a foreign State not at war with the King invades the kingdom without his sovereign's warrant, he is nevertheless an enemy of the King, and a subject of the King who adheres to him is guilty of this species of treason (*b*).

Inciting a foreign State not at war with the King to invade the kingdom is not an adherence to the King's enemies, but is an overt act of compassing the King's death (*c*).

(*n*) Fost. 210; 1 Hale, P. C. 133*, 143, 149; *R.* v. *Hardie* (1820), 1 State Tr. (N. S.) 610, 765; *R.* v. *Frost* (1839), 4 State Tr. (N. S.) 86, 444.

(*o*) 3 Co. Inst. 10; Fost. 216; 1 East, P. C. 70, 71; *R.* v. *MacGrowther* (1746), 18 State Tr. 391.

(*p*) Stat. (1495) 11 Hen. 7, c. 1, s. 1. See title CONSTITUTIONAL LAW, Vol. VI., p. 346.

(*q*) Treason Act, 1351 (25 Edw. 3, stat. 5, c. 2). See *R.* v. *Lynch*, [1903] 1 K. B. 444; *R.* v. *Vaughan* (1696), 13 State Tr. 485.

(*r*) Fost. 219; 1 East, P. C. 77.

(*s*) 1 Hale, P. C. 162.

(*a*) Fost. 220; 1 East, P. C. 79; *R.* v. *Vaughan* (1696), 13 State Tr. 485, 530.

(*b*) Fost. 219; 1 East, P. C. 78.

(*c*) 1 East, P. C. 78; *Story's Case* (1571), 3 Dyer, 298 b. If war resulted from such incitement, then the persons who incited would be guilty of adherence to the King's enemies (1 East, P. C. 78).

A distinction is drawn between "enemies" and "rebels," and assistance given to rebels within the realm is not an adherence to the King's enemies (*d*).

A person may adhere to the King's enemies by sending them money or provisions, or by rendering them any kind of aid or comfort which, when given to a rebel within the realm, would make the subject guilty of levying war (*e*).

Communications with the enemy from which he may derive information enabling him to shape his attack or defence constitute an adherence to the enemy (*f*). The fact that the communications were intercepted and did not reach the enemy is immaterial (*g*).

A British subject adheres to the King's enemies if he takes an oath of fidelity to them, or makes a declaration of willingness to take up arms on their behalf, or becomes naturalised in the hostile State while it is at war with the King, unless he acts under compulsion and returns to his allegiance as soon as possible (*h*).

Mere acts of submission to *force majeure* in case of an invasion are not overt acts of treason (*i*), nor is the refusal to give personal assistance to the King or his forces against an invading enemy (*j*).

(iv.) *Indictment and Trial.*

No accessories in treason.

886. All persons who incite, aid, or abet an act of treason, or who receive or protect a traitor, are guilty of treason as principals and should be indicted as such. There are no accessories either before or after the fact in treason. A person who commits an act by which, in felony, he would become an accessory is in treason a principal traitor (*k*).

(*d*) 1 Hale, P. C. 159; 3 Co. Inst. 11; *R.* v. *Sheares* (1798), 27 State Tr. 255, 388, 391. But such assistance would be an overt act of levying war or of compassing the King's death (*R.* v. *Townley* (1746), 18 State Tr. 329.

(*e*) 1 East, P. C. 78; Fost. 217.

(*f*) Fost. 217; *R.* v. *Preston* (*Lord*) (1691), 12 State Tr. 645; *R.* v. *Gregg* (1708), 14 State Tr. 1371; *R.* v. *Hensey* (1758), 19 State Tr. 1341, 1344; *R.* v. *Tyrie* (1782), 21 State Tr. 815; *R.* v. *Jackson* (1795), 25 State Tr. 783; *R.* v. *Sheares* (1798), 27 State Tr. 255. In *R.* v. *Stone* (1796), 25 State Tr. 1155, it was contended by Erskine on behalf of the prisoner that such communications were not traitorous, if the prisoner's object and intention were not to assist the enemy but to benefit this country by dissuading the enemy from continuing the war (see cols. 1372 *et seq.*). Lord KENYON, C.J., does not appear to have ruled against this contention (see cols. 1432, 1434, 1435), and the jury acquitted the prisoner, apparently upon this ground.

(*g*) *R.* v. *Hensey* (1758), 19 State Tr. 1341, 1372; *R.* v. *De la Motte* (1781), 21 State Tr. 687, 808.

(*h*) 1 Hale, P. C. 167; *R.* v. *Lynch*, [1903] 1 K. B. 444.

(*i*) Fost. 217.

(*j*) 1 East, P. C. 80; but this is stated to be a high misdemeanour punishable by fine and imprisonment (*ibid.*).

(*k*) Fost. 341; 1 Hale, P. C. 233. A gaoler who voluntarily permits a person imprisoned for treason to escape, and anyone who rescues such a person, is himself guilty of treason (Fost. 344). Although a person who receives and harbours a traitor is himself said to be guilty as a principal traitor, he must be indicted specially for such receiving and harbouring, and not for the principal treason, and he cannot be tried on a separate indictment for the receiving and harbouring,

SECT. 1. Offences against the Sovereign.

887. Different kinds of treason and different overt acts may be alleged in the same indictment, and such joinder does not vitiate the indictment nor afford any ground for putting the Crown to an election to proceed on one charge (*l*).

Overt acts.

888. The treason alleged must be proved by overt acts, and the overt acts upon which it is intended to rely must be expressly alleged in the indictment (*m*), and must be proved (*n*), and no evidence is admissible of any overt act that is not so alleged unless it affords direct proof of any of the overt acts that are laid (*o*).

Copy of indictment and list of witnesses and petty jury.

889. A copy of the indictment must be supplied to the accused ten days before the trial, together with a list of the witnesses and, except where the treason charged is the assassination of or any attempt upon the person of the Sovereign, a list of the petty jury, with their addresses and occupations (*a*). Where there is a failure to comply with the last-named requirements, advantage of the omission cannot be taken by plea, but an application may be made for a postponement of the trial (*b*).

Limitation of time.

890. An indictment for treason must be found by the grand jury within three years next after the commission of the treason, unless in the case of the treason of designing, endeavouring, or attempting the assassination of the King, in which case there is no limitation of time (*c*).

Two witnesses necessary.

891. Except in cases of personal attacks upon the King, there must be two witnesses, either both of them to the same overt act or one of them to one overt act and the other to another overt act charged in the indictment, provided that the latter is of the same

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until after the traitor alleged to have been received is convicted; if the receiver is tried for the receiving and harbouring upon the same indictment with the principal offender, as he may be, the jury must first be charged to inquire as to the guilt of the latter, and if he be acquitted, the receiver must also be acquitted (1 Hale, P. C. 238; Fost. 345). See also the Act of 1 Will. & Mar., sess. 1 (1688), for annulling the attainder of Lady Alice Lisle (11 State Tr. 297, 381), and p. 256, *ante*.

(*l*) *R.* v. *Mitchel* (1848), 6 State Tr. (N. S.) 599, 620.

(*m*) Treason Act, 1695 (7 & 8 Will. 3, c. 3), s. 8. If the overt acts alleged consist of words or documents, it is sufficient to set out their effect, and it is not necessary to set out the exact words; *R.* v. *Francia* (1717), 15 State Tr. 897; *R.* v. *Watson* (1817), 2 Stark, 116, 132. See also *R.* v. *Vaughan* (1696), 13 State Tr. 485, 498.

(*n*) Treason Act, 1351 (25 Edw. 3, stat. 5, c. 2); Treason Act, 1796 (36 Geo. 3, c. 7), s. 1.

(*o*) *R.* v. *Rookwood* (1696), 13 State Tr. 139, 217; *R.* v. *Layer* (1722), 16 State Tr. 93, 223; *R.* v. *Deacon* (1746), 18 State Tr. 365.

(*a*) Treason Act, 1695 (7 & 8 Will. 3, c. 3), s. 1; Treason Act, 1708 (7 Ann. c. 21), s. 14; Juries Act, 1825 (6 Geo. 4, c. 50), s. 21. The copy of the indictment should include the caption (1 Chitty, Criminal Law, 405), see p. 348, *ante*.

(*b*) *R.* v. *Burke* (1867), 10 Cox, C. C. 519 (Ir.); *R.* v. *Frost* (1839), 4 State Tr. (N. S.) 85. An irregularity in the copy of the indictment supplied will be cured by plea (Fost. 230).

(*c*) Treason Act, 1695 (7 & 8 Will. 3, c. 3), ss. 5, 6.

species of treason (*d*). Both the witnesses must be credible, and the jury must believe them both (*e*).

One witness is sufficient to prove a collateral fact, not tending to the proof of the overt act, *e.g.*, the status or nationality of a person (*f*).

If the prisoner confesses in open court, the two witnesses are not required (*g*).

Evidence of confessions out of court is admissible, but such evidence is not sufficient in itself, and can only be supplementary to the evidence of the two witnesses required by statute (*h*).

Evidence.

892. Except in the case of treason committed abroad, proof must be given that one of the overt acts alleged was committed within the jurisdiction of the court; when this has been done, evidence can be given of the commission of the alleged overt acts committed outside the jurisdiction of the court (*i*).

Conspiracy.

893. Where the overt acts charged in the indictment show a conspiracy between the prisoner and others, evidence may be given of any acts committed by a co-conspirator in the execution of the common design, even if such acts occurred after the dates of the alleged overt acts and after the prisoner's arrest, if such events were the natural result of the conspiracy in which he was engaged, as, *e.g.*, the breaking out of an insurrection which was the object of the conspiracy (*k*).

Married women.

894. In treason a married woman cannot excuse herself by alleging that she acted under the coercion of her husband (*l*). But if the husband commits treason and his wife knowingly receives him, she does not herself become guilty of treason (*m*).

SUB-SECT. 2.—*Treason Felony.*

Treason felony.

895. Everyone is by statute (*n*) guilty of felony who, either within the United Kingdom or without, compasses, imagines, invents, devises or intends (1) to deprive or depose the King from

(*d*) Treason Act, 1695 (7 & 8 Will. 3, c. 3), ss. 2, 4; Treason Act, 1795 (36 Geo. 3, c. 7), s. 1; *R.* v. *Lovick* (1696), 13 State Tr. 267, 305; *R.* v. *McCafferty* (1867), 10 Cox, C. C. 603, C. C. R.

(*e*) *R.* v. *Castlemaine* (*Lord*) (1680), 7 State Tr. 1067, 1112.

(*f*) Fost. 240.

(*g*) *Ibid.*

(*h*) Fost. 240—244; *R.* v. *Willis* (1710), 15 State Tr. 613, 623; *R.* v. *Berwick* (1746), 18 State Tr. 367; *R.* v. *Crossfield* (1796), 26 State Tr. 1, 55.

(*i*) *R.* v. *Vane* (1662), 6 State Tr. 119, 123. As to venue, see pp. 283, 289, *ante*; as to challenges, see p. 361, *ante*. As to treasons committed abroad, see p. 276, *ante*.

(*k*) *R.* v. *Horne Tooke* (1794), 1 East P. C. 98; *R.* v. *Hardy* (1794), 1 East, P. C. 99; *R.* v. *Watson* (1817), 2 Stark. 116, 127; *R.* v. *McCafferty* (1867), 10 Cox, C. C. 603, C. C. R.; see *R.* v. *Stone* (1796), 6 Term Rep. 527.

(*l*) 1 Hale, P. C. 45.

(*m*) 1 Hale, P. C. 47.

(*n*) Treason Felony Act, 1848 (11 & 12 Vict. c. 12), s. 3. As to treason felony, see also title CONSTITUTIONAL LAW, Vol. VI., p. 354.

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the style or honour of the Crown of the United Kingdom or of any of the King's dominions; or (2) to levy war against the King within the United Kingdom in order by force or constraint to compel him to change his measures or counsels, or in order to put force or constraint upon or to intimidate or overawe either House of Parliament, or to move or stir any foreigner with force to invade the United Kingdom or any of the King's dominions, and who expresses, utters, or declares such compassings or intentions by publishing any printing or writing, or by any overt act or deed (*o*).

896. There may be accessories to the offence of treason felony. A principal in the second degree and an accessory before the fact are punishable in the same manner as a principal in the first degree; accessories after the fact are liable to imprisonment with or without hard labour for a term not exceeding two years (*p*).

Indictment.

897. Any number of overt acts may be charged in an indictment for treason felony (*q*). It is a sufficient overt act that the accused conspired with others (*r*) to commit any offence specified by the Treason Felony Act, 1848 (*s*), if there was an overt act committed within the King's dominions. If the matters alleged in the indictment or proved at the trial amount in law to treason, the indictment is not on that account defective, nor is the accused entitled to an acquittal; but an acquittal or conviction on an indictment for treason felony will be a bar to a prosecution for treason upon the same facts (*t*).

Overt acts out of jurisdiction.

Even although the prisoner has not committed within the King's dominions any of the acts mentioned in the statute he may be tried in an English court in respect of the act of a co-conspirator committed within the jurisdiction of the court in furtherance of the common object (*a*).

Punishment.

898. The punishment for treason felony is penal servitude for life, or for not less than three years, or imprisonment with hard labour for not more than two years (*b*).

(*o*) As to what amounts to a "levying of war," see p. 452, *ante*, and *R.* v. *Dowlin* (1848), 3 Cox, C. C. 509; *R.* v. *Gallagher* (1883), 15 Cox, C. C. 291. As to overt acts, see note (*e*) on p. 451, *ante*.

(*p*) Treason Felony Act, 1848 (11 & 12 Vict. c. 12), s. 8.

(*q*) *Ibid.*, s. 5. There is no objection to alleging several overt acts in one count (*Mulcahy* v. *R.* (1868), L. R. 3 H. L. 306).

(*r*) *Mulcahy* v. *R.*, *supra*; *R.* v. *Davitt* (1870), 11 Cox, C. C. 676.

(*s*) 11 & 12 Vict. c. 12.

(*t*) Treason Felony Act, 1848 (11 & 12 Vict. c. 12), s. 7; *R.* v. *Mikhel* (1848), 6 State Tr. (N. S.), 599. Nothing in the Act is to lessen the force of, or in any manner affect, anything enacted by the Treason Act, 1351 (25 Edw. 3, stat. 5, c. 2); *ibid.*, s. 6.

(*a*) *R.* v. *Meany* (1867), 10 Cox, C. C. 506 (Ir.), C. C. R.; see also *R.* v. *Deasy* (1883), 15 Cox, C. C. 334. Unless some overt act is committed within the King's dominions, there can be no prosecution for treason felony (*R.* v. *Meany*, *supra*).

(*b*) Treason Felony Act, 1848 (11 & 12 Vict. c. 12), s. 3; Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), s. 2; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

SUB-SECT. 3.—*Assaults on the King.*

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Assaults on the King.

899. By statute (*c*) a person is guilty of a high misdemeanour who—(1) wilfully discharges or attempts to discharge or points, aims, or presents at or near the person of the King any gun, pistol, or any other firearm or other arms, whether the same does or does not contain any explosive or destructive material, or discharges or causes to be discharged or attempts to discharge or causes to be discharged any explosive substance or material near to the King's person; (2) wilfully strikes or attempts to strike at the King with any offensive weapon or in any other manner; (3) wilfully throws or attempts to throw any substance etc. at or upon the person of the King (*d*); (4) wilfully produces or has near the person of the King any gun etc., or any explosive, destructive, or dangerous matter, with intent to use the same to injure the person of the King or to alarm him (*e*). The offence is not triable at quarter sessions (*f*).

Punishment.

The punishment for these offences is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years, and not more than three whippings during the imprisonment (*g*).

Indictment.

Upon an indictment for shooting at the King it is unnecessary to prove any intention to inflict personal injury or to prove that the firearm used was capable of doing such an injury (*h*).

SUB-SECT. 4.—*Contempts against the King.*

Contempts.

900. It is a contempt against the King to disobey any of his lawful commands (*i*). Thus, it is a contempt punishable by fine or imprisonment to disobey the orders of the King's courts of

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(*c*) Treason Act, 1842 (5 & 6 Vict. c. 51), s. 2. See title CONSTITUTIONAL LAW, Vol. VI., p. 358.

(*d*) In any of these cases the act must have been done with intent to injure the person of or to alarm the King, or the result must be to endanger the public peace (*ibid.*).

(*e*) Treason Act, 1842 (5 & 6 Vict. c. 51), s. 2.

(*f*) Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1.

(*g*) Treason Act, 1842 (5 & 6 Vict. c. 51), s. 2; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1; Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), s. 2. By the Treason Act, 1842, s. 2, the maximum length of imprisonment as an alternative punishment is three years with or without hard labour. It is uncertain whether or not the effect of the Penal Servitude Act, 1891, s. 1 (2), is to reduce the maximum imprisonment to two years.

(*h*) *R.* v. *Hamilton* (1849), 7 State Tr. (N. S.) 1130.

(*i*) In the earlier works on criminal law a long list of offences are given under the heading of "contempts" or "misprisions." These were either contempts against the King's palace or courts of justice, or against his person, title, prerogative, or Government (see 1 Hawk. P. C. 61, c. 6; 4 Bl. Com. 122; 3 Co. Inst. 140; Petersdorff's Abridgment, tit. Contempt). Some contempts of this character may now be dealt with as seditious libels (see *R.* v. *Harvey* (1823), 2 B. & C. 257); and others are now hardly likely to form the subject of prosecutions, *e.g.*, such as disobedience to a summons to attend the Privy Council, or to a royal letter requiring a subject to return from abroad (4 Bl. Com. 122; Petersdorff's Abridgment, tit. Contempt). No prosecution for such an offence has occurred in modern times. In *R.* v. *Harris* (1791), 4 Term Rep. 202, it was held to be a misdemeanour to disobey an order of the King in Council made under the provisions of an Act of Parliament which did not specify any penalty for disobedience; but this was apparently upon the ground that the defendant had really disobeyed the statute; and see *R.* v. *Hall*, [1891] 1 Q. B. 747, 767.

SECT. 1. Offences against the Sovereign.

justice (*k*), or to disobey the provisions of an Act of Parliament, where no particular penalty is imposed and when the act is one which prohibits a matter of public grievance or commands a matter of public convenience (*l*). Where a statute only extends to disputes of a private nature (*m*), or where a particular remedy or punishment is provided by the statute (*n*), disobedience to it cannot be punished as a contempt.

Punishment.

The punishment for this offence is fine and imprisonment without hard labour (*o*).

SECT. 2.—*Offences against Public Tranquillity.*

SUB-SECT. 1.—*Sedition.*

Seditious conspiracy.

901. Every person is guilty of the common law misdemeanour of seditious conspiracy who agrees with someone else (not being his or her wife or husband) to do any act for the furtherance of a common seditious intention, *e.g.*, to hold a meeting for the purpose of disturbing the public peace or of raising discontent and disaffection or exciting hatred and contempt of the Government (*p*).

Seditious libel.

902. Every person is guilty of the common law misdemeanour of seditious libel if, with seditious intention, he either speaks and publishes any words or publishes a libel (*q*).

The freest public discussion, comment, criticism, and censure, either at meetings or in the Press, in relation to all political or party questions, all public acts of the servants of the Crown, all acts of the Government, and all proceedings of courts of justice are permissible, and no narrow construction is to be put upon the expressions used in such a discussion etc., but the criticism and censure must be without malignity, and must not impute corrupt or malicious motives (*r*).

If the words used, however defamatory, were not spoken with a seditious intention the defendant is not guilty, such an intention

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(*k*) See p. 501, *post*, and title CONTEMPT OF COURT, Vol. VII., p. 279.

(*l*) 4 Bl. Com. 122 ; 1 Hawk. P. C., c. 6 ; 2 Hawk. P. C., c. 25, s. 4 ; *Crouther's Case* (1599), Cro. Eliz. 654 ; *R.* v. *Price* (1840), 11 Ad. & El. 727 ; *R.* v. *Sainsbury* (1791), 4 Term Rep. 451, 457 ; *R.* v. *Hall*, [1891] 1 Q. B. 747, 753.

(*m*) 2 Hawk. P. C., c. 25, s. 4 (where a number of instances are given).

(*n*) *R.* v. *Wright* (1758), 1 Burr. 543.

(*o*) The offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*p*) Stephen's Digest of Criminal Law, 6th ed., pp. 70, 71. For instances of seditious conspiracies, see *R.* v. *O'Connell* (1844), 11 Cl. & Fin. 155 ; *R.* v. *Hunt* (1820), 1 State Tr. (N. S.) 171 ; *R.* v. *O'Connor* (1843), 4 State Tr. (N. S.) 935 ; *R.* v. *Cooper* (1843), 4 State Tr. (N. S.) 1249 ; *R.* v. *Holberry* (1840), 4 State Tr. (N. S.) 1347 ; see *R.* v. *Burns* (1886), 16 Cox, C. C. at p. 365 ; *R.* v. *Parnell* (1881), 14 Cox, C. C. 508.

(*q*) The libel may be in writing, print, or may be contained in a drawing or engraving, or painted picture, or sculpture, or any permanent representation (*R.* v. *Sullivan* (1868), 11 Cox, C. C. 44, at p. 55). Libel in civil cases is restricted to such permanent representations, but in criminal cases words spoken may amount to a seditious libel.

(*r*) *R.* v. *Sullivan, supra*, at p. 49. Every man has a right to give every public matter a candid, full and free discussion ; something must be allowed for feeling in men's minds and for some warmth of expression, but an intention

being of the essence of the offence; but the character of the words may form irresistible evidence of the nature of the intention (*s*).

The punishment for these offences is imprisonment without hard labour for a period not exceeding two years with or without a fine (*t*).

Libel on the administration of justice.

903. Seditious words with regard to the administration of justice in a superior court, whether spoken in or out of court, are punishable by indictment or information, or summarily by attachment for contempt, by the court whose proceedings are defamed (*u*), and the last-mentioned course is that which is now usually adopted.

Such words spoken of an inferior court of record are punishable summarily by that court, if they are spoken in the face of the court (*a*). If spoken of the judge out of court and relating to the execution of his office they are indictable, but not if they are only abusive or defamatory of the judge personally (*b*).

Privilege of Parliament.

904. Words spoken in Parliament by a member of Parliament cannot be the subject of indictment or other proceedings out of Parliament (*c*). But if the member afterwards publishes his speech,

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to incite the people to take the power into their own hands and to provoke them to tumult and disorder is a seditious intention (*R.* v. *Collins* (1839), 9 C. & P. 456, at p. 461, *per* LITTLEDALE, J.; and see *R.* v. *Burdett* (1820), 1 State Tr. (N. S.) 1, 50).

(*s*) *R.* v. *M'Hugh*, [1901] 2 I. R. 569, 587. If the words, whether written or spoken, have a direct tendency to cause unlawful meetings and disturbances and to lead to a violation of the laws, they are seditious, as the defendant will be taken to have intended the natural consequences of what he has done (*R.* v. *Lovett* (1839), 9 C. & P. 462, 466, *per* LITTLEDALE, J.; *R.* v. *Sullivan*, *supra*, at p. 58; see also *R.* v. *Horne* (1777), 20 State Tr. 651, 762). The document containing an alleged seditious libel must be considered as a whole; if it is contained in a newspaper, the defendant is entitled to have read in evidence other passages in the same newspaper tending to show his intention in publishing the specific paragraph complained of (*R.* v. *Lambert* (1810), 2 Camp. 398). On the trial of Horne Tooke for high treason passages from his writings some years previously were allowed by EYRE, C.J., to be read on the prisoner's behalf to show his political sentiments (*R.* v. *Horne Tooke* (1794), 25 State Tr. 1, 321, 344, 361), but in *R.* v. *Lambert*, *supra*, Lord ELLENBOROUGH, C.J., apparently doubted whether that evidence had been properly admitted.

(*t*) See Criminal Libel Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 8), s. 4; stat. 11 Geo. 4 & 1 Will. 4, c. 24), s. 1. The person imprisoned is to be treated as a misdemeanant of the first division (Prison Act, 1877 (40 & 41 Vict. c. 21), s. 40). On a conviction for a seditious libel, the court may make an order for seizure of all copies of the libel (Criminal Libel Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 8), s. 1).

(*u*) See *R.* v. *Almon* (1765), Wilm. 243, 252 *et seq.*; *Crawford's Case* (1849), 13 Q. B. 613, 628; see *R.* v. *Gray*, [1900] 2 Q. B. 36; *McLeod* v. *St. Aubyn*, [1899] A. C. 549, P. C. See title CONTEMPT OF COURT, Vol. VII., p. 279.

(*a*) See *Rainy* v. *Sierra Leone Justices* (1853), 8 Moo. P. C. C. 47, 54. As to county courts, see County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 162, and title COUNTY COURTS, Vol. VIII., p. 615.

(*b*) *R.* v. *Wrightson* (1708), 11 Mod. Rep. 166; *R.* v. *Revel* (1721), 1 Stra. 420; *R.* v. *Pocock* (1741), 2 Stra. 1157; *Ex parte Marlborough (Duke)* (1844), 5 Q. B. 955; *R.* v. *Weltje* (1809), 2 Camp. 142; *R.* v. *Lefroy* (1873), L. R. 8 Q. B. 134; *R.* v. *Brompton County Court Judge*, [1893] 2 Q. B. 195, 199. See also title CONTEMPT OF COURT, Vol. VII., p. 284.

(*c*) Bill of Rights (1 Will. & Mar., sess. 2, c. 2); *Ex parte Wason* (1869), L. R. 4 Q. B. 573; *Dillon* v. *Balfour* (1887), 20 L. R. Ir. 600.

SECT. 2. Offences against Public Tranquillity.

the absolute privilege is lost, and he may be indicted, if the publication was illegal (*d*).

Indictment.

905. In an indictment for seditious words spoken, or for a seditious libel, the words alleged to be seditious must be specified (*e*). It is not essential that the indictment should allege that the words were spoken or published "seditiously," if it alleges an intent which the law defines to be a seditious intent (*f*).

Evidence.

906. If the manuscript of a seditious libel is proved to be in the handwriting of the defendant, and it is also proved that the same libel was in fact published, this is *primâ facie* evidence for the jury of a publication by the defendant, though no evidence is adduced that he directed the publication (*g*).

To prove that the publication was with an unlawful intent or was not accidental, evidence of the publication of other libels is admissible, provided they expressly refer to the subject-matter of the libel which is charged in the indictment (*h*).

It is essential that so much of the words alleged be proved at the trial as will support the charge of sedition, but it is immaterial that a portion is unproved, if what is proved substantially constitutes sedition (*i*).

If words spoken or published are seditious, it is no defence that they are true, and evidence to prove their truth is inadmissible (*k*).

Libels in newspaper.

907. No criminal prosecution can be commenced against any proprietor, publisher, editor, or any person responsible for the

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(*d*) *R.* v. *Abingdon* (*Lord*) (1794), 1 Esp. 226; *R.* v. *Creevey* (1813), 1 M. & S. 273, approved in *Davison* v. *Duncan* (1857), 7 E. & B. 229, 233, and *Wason* v. *Walter* (1868), L. R. 4 Q. B. 73, 95. The publication of seditious matter by a newspaper in a *bonâ fide* report of proceedings in a court of justice or in Parliament would not be criminal (*Wason* v. *Walter*, *supra*), but the publication of isolated seditious matter in a newspaper might be criminal.

(*e*) See the opinion of the judges in *R.* v. *Sacheverell* (1710), 15 State Tr. 1, 466; and the judgment in *R.* v. *Sparling* (1722), 1 Stra. 497; *Bradlaugh* v. *R.* (1878), 3 Q. B. D. 607, 619, C. A.

(*f*) *R.* v. *M'Hugh*, [1901] 2 I. R. 569.

(*g*) *R.* v. *Lovett* (1839), 9 C. & P. 462; see, further, as to what amounts to a publication, title LIBEL AND SLANDER. It is uncertain whether the composition of a seditious writing with the intent that it should be published, but without any actual publication, is a punishable offence (see *R.* v. *Burdett* (1820), 1 State Tr. (N. S.) 1, 122, 138). The Criminal Libel Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 8), ss. 1, 4, appears to contemplate the composition of a blasphemous or seditious libel as a distinct offence from the publication of such a document.

(*h*) *R.* v. *Pearce* (1791), Peake, 75, in which case Lord KENYON, C.J., even admitted such evidence to prove the fact of publication and that the defendant was the author of a libel; but see *Finnerty* v. *Tipper* (1809), 2 Camp. 72; *Chubb* v. *Westley* (1834), 6 C. & P. 436; *Plunkett* v. *Cobbett* (1804), 5 Esp. 136; *Pearson* v. *Lemaitre* (1843), 5 Man. & G. 700, 719, 720.

(*i*) *R.* v. *Fussell* (1848), 3 Cox, C. C. 291, 294. The whole of the speech or writing need not be set forth in the indictment, and if any part of it varied or controlled the sense of the matter alleged to be seditious, the onus is upon the defendant to show it (*Re Crowe* (1848), 3 Cox, C. C. 123).

(*k*) The Libel Act, 1843 (6 & 7 Vict. c. 96), s. 6, and the Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), s. 4, do not apply to seditious libels (*R.* v. *Duffy* (1846), 2 Cox, C. C. 45; *Ex parte O'Brien* (1883), 15 Cox, C. C. 180 (Ir.); *R.* v. *M'Hugh*, [1901] 2 I. R. 569).

publication of a newspaper, for any libel published therein without the order of a judge in chambers being first obtained; the person accused is entitled to notice of an application for such an order and to be heard thereon (*l*).

Functions of jury.

908. In all prosecutions for libel the jury are competent to give their verdict upon the whole matter in issue, and cannot be required or directed by the judge to find a defendant guilty on proof of the publication of the libel by the defendant and of the result ascribed to the libel in the indictment (*m*).

Seditious intention.

909. A seditious intention is an intention—(1) to bring into hatred or contempt, or to excite disaffection against, the King or the Government and Constitution of the United Kingdom, or either House of Parliament, or the administration of justice (*n*); or (2) to excite the King's subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State by law established; or (3) to incite any person to commit any crime in disturbance of the peace; or (4) to raise discontent or disaffection amongst His Majesty's subjects; or (5) to promote feelings of ill will and hostility between different classes of such subjects.(*o*).

But an intention is not seditious if the object is to show that the King has been misled or mistaken in his measures, or to point out errors or defects in the Government or Constitution with a view to their reformation, or to excite the subjects to attempt by lawful means the alteration of any matter in Church or State by law established, or to point out, in order to their removal, matters which are producing, or have a tendency to produce, feelings of hatred and ill will between classes of the King's subjects (*p*).

In this as in other offences a person is deemed to intend the consequences which would naturally follow from his conduct at the time, and in the circumstances, in which the words were used.

Libels on the Constitution.

910. By statute (*q*) a person is guilty of a misdemeanour who maliciously and advisedly, by writing, printing, preaching or other speaking, expresses, publishes, utters, declares or affirms (1) that there lies any obligation upon himself or any other person what-

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(*l*) Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), s. 8. As to newspaper reports of proceedings at public meetings, see title LIBEL AND SLANDER.

(*m*) Libel Act, 1792 (32 Geo. 3, c. 60), s. 1.

(*n*) See *R.* v. *Lambert* (1810), 2 Camp. 398; *R.* v. *Tutchin* (1704), 14 State Tr. 1095; *R.* v. *Cobbett* (1804), 29 State Tr. 1; *R.* v. *Wilkes* (1770), 4 Burr. 2527; *R.* v. *Harvey* (1823), 2 B. & C. 257; *R.* v. *M'Hugh*, [1901] 2 I. R. 569; and cases cited, p. 460, *ante*.

(*o*) *R.* v. *M'Hugh*, *supra*, at p. 578.

(*p*) The above statement of the law upon the subject of sedition is taken almost verbatim from Stephen's Digest of Criminal Law, 6th ed., pp. 70, 71, which is partly taken from the Criminal Libel Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 8), s. 1. The corresponding passage in the first edition of that work, pp. 55, 56, which is in substantially the same terms, was approved and adopted by CAVE, J., in *R.* v. *Burns* (1886), 16 Cox, C. C. 355, and by the King's Bench Division in Ireland in *R.* v. *M'Hugh*, *supra*. See also *R.* v. *Sullivan* (1868), 11 Cox, C. C. 44 (Ir.). As to the difference between high treason and sedition, see 1 East, P. C. 48.

(*q*) Stat. (1661), 13 Car. 2, stat. 1, c. 1, s. 3.

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soever from any oath, covenant or engagement to endeavour a change of government either in Church or State, or (2) that both Houses or either House of Parliament have or has a legislative power without the King; the punishment for this offence is the penalty of *præmunire*. No person may be prosecuted for this statutory offence without an order of the King under the sign manual or of the Privy Council, and the prosecution must be commenced within six months next after the offence committed, and the indictment must be found within three months after the commencement of the prosecution (*r*).

Libels as to succession to the Crown.

911. Every person is by statute (*s*) guilty of a misdemeanour who maliciously and directly by preaching, teaching, or advised speaking declares that any person has any right to the Crown otherwise than according to the statutes (*t*) by which the succession is regulated, or that the Kings or Queens of the realm, with authority of Parliament, are not able to make laws to limit and bind the Crown and its descent. The punishment for the offence is the penalty of *præmunire* (*u*). An information for any such words spoken must be laid on oath before a justice within three days; the prosecution must be commenced within three months, and two credible witnesses are necessary (*x*).

None of the above offences is triable at quarter sessions (*y*).

SUB-SECT. 2.—*Inciting to Mutiny.*

Inciting to mutiny.

912. Every person is by statute (*z*) guilty of a felony who maliciously and advisedly endeavours (1) to seduce any person serving in His Majesty's forces by sea or land from his duty and allegiance, or (2) incites such person to commit any act of mutiny or to make or endeavour to make a mutinous assembly, or to commit any traitorous or mutinous practice. These offences are punishable by penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*a*).

(*r*) Stat. (1661) 13 Car. 2, stat. 1, c. 1, s. 4.

(*s*) Succession to the Crown Act, 1707 (6 Ann. c. 41), s. 2.

(*t*) Namely, Bill of Rights (1688) (1 Will. & Mar., sess. 2, c. 2); Act of Settlement (11 & 12 Will. 3, c. 2); and the Union with Scotland Act, 1706 (6 Ann. c. 11).

(*u*) Succession to the Crown Act, 1707 (6 Ann. c. 41), s. 2. As to the penalty of *præmunire*, see note (*a*) on p. 409.

(*x*) Succession to the Crown Act, 1707 (6 Ann. c. 41), ss. 2, 3.

(*y*) Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1.

(*z*) Incitement to Mutiny Act, 1797 (37 Geo. 3, c. 70), s. 1.

(*a*) Punishment of Offences Act, 1837 (7 Will. 4 & 1 Vict. c. 91), s. 1; Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), ss. 2, 3; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. These offences are not triable at quarter sessions. Any person subject to military law who (1) causes, or conspires to cause, a mutiny or sedition in His Majesty's regular or auxiliary forces; or (2) endeavours to seduce any person in such forces from his allegiance or to persuade any person in such forces to join in any mutiny or sedition; or (3) joins in or does not use his utmost endeavours to suppress such a mutiny or sedition; or (4), if an intended mutiny or sedition has come to his knowledge, fails without delay to inform his commanding officer thereof, is, on conviction by court-martial, liable to suffer death or such less punishment as is mentioned

It must be proved that the accused knew that the person whom he attempted to seduce was a person serving in the sea or land forces (*b*). A soldier or sailor is serving in such forces, although he is at the time in the hospital, and not in the receipt of pay, and not liable to be tried by court-martial (*c*).

SUB-SECT. 3.—*Unlawful Oaths.*

Administering an oath without authority.

913. Every person is guilty of a misdemeanour at common law, punishable with fine and imprisonment without hard labour, who administers an oath not being duly authorised by law to do so, whether the oath is innocent in itself or otherwise (*d*).

Administering oath for seditious purposes etc.

914. A person is by statute (*e*) guilty of felony (1) who in any form administers or causes to be administered or assists or is present at and consenting to the administering or taking of any oath or engagement purporting or intended to bind the persons taking it to engage in any mutinous or seditious purpose, or to disturb the peace, or to be of any society formed for such purpose, or to obey the orders of any committee or body not lawfully constituted, or of any leader not having authority by law for that purpose, or not to inform or give evidence against any associate or other person, or not to reveal any unlawful combination or any illegal act done or to be done or any illegal oath or engagement or its import; or (2) who takes any such oath without being compelled thereto.

The "unlawful combination" mentioned above is not confined to seditious or mutinous societies, but extends to all societies of an illegal nature (*f*).

The punishment for this offence is penal servitude for not more than seven years, or for not less than three years, or imprisonment with or without hard labour for not more than two years (*g*).

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in the Army Act (Army Act, 1881 (44 & 45 Vict. c. 58), s. 7). As to mutinies by seamen of the Royal Navy, see Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), ss. 10—19. A civilian who persuades or assists a soldier to desert, or who knowingly conceals a deserter, or aids in rescuing him, is liable on summary conviction to imprisonment with or without hard labour for six months (Army Act, 1881 (44 & 45 Vict. c. 58), s. 153). See also title ROYAL FORCES.

(*b*) *R.* v. *Fuller* (1797), 2 Leach, 790, 798.

(*c*) *R.* v. *Tierney* (1804), Russ. & Ry. 74.

(*d*) 3 Co. Inst. 165; *R.* v. *Eadon* (1813), 31 State Tr. 1064, 1069. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1). See also p. 497, *post*, as to the statutory offence of administering unnecessary oaths.

(*e*) Unlawful Oaths Act, 1797 (37 Geo. 3, c. 123), s. 1.

(*f*) *R.* v. *Lovelass* (1834), 6 C. & P. 596; *R.* v. *Dixon* (1834), 6 C. & P. 601; see also *R.* v. *Marks* (1802), 6 East, 157; *R.* v. *Brodribb* (1816), 6 C. & P. 571, where the oath was to observe secrecy as to a night poaching expedition. As to unlawful societies, see p. 466, *post*.

(*g*) Unlawful Oaths Act, 1797 (37 Geo. 3, c. 123), s. 1; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. As to the form of an indictment for the offence, see *R.* v. *Moors* (1801), 6 East, 419, n., C. C. R. A person who is tried and acquitted or convicted for an offence against this Act cannot be indicted

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Administering or taking oath to commit treason or murder or felony.

915. A person is by statute (*h*) guilty of felony who administers etc. or takes without being compelled, any oath or engagement purporting or intending to bind the person who takes it to commit any treason or murder or any felony which in 1812 was punishable by law with death.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*i*). This offence is not triable at quarter sessions (*k*).

If the oath is taken under compulsion, the person taking it will not be excused, unless within fourteen days he gives information on oath to a justice of the peace or to a Secretary of State or Privy Councillor, or, if the person who took the oath is in His Majesty's forces, to his commanding officer (*l*).

SUB-SECT. 4.—*Unlawful Societies.*

Unlawful societies.

916. There are certain societies which are by statute (*m*) declared to be unlawful combinations or confederacies. They are—(1) societies whose members are required to take any oath or engagement prohibited by the Unlawful Oaths Act, 1797 (*n*), or the Unlawful Oaths Act, 1812 (*o*); (2) societies the members whereof are required to take any oath, test, or declaration not authorised by law, or which have committees or officers not known to the society at large, or the names of whose members are kept secret from each other, or which are composed of different branches acting distinctly from each other or having separate officers, or which appoint delegates to confer with any other society or club or to induce persons to join them (*p*).

Any person who becomes or acts as a member of any such society

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again for the same offence as high treason or misprision of treason, but a person guilty of an offence against the Act, if not tried for that offence, may be tried for high treason or misprision of treason (*ibid.*, s. 7).

(*h*) Unlawful Oaths Act, 1812 (52 Geo. 3, c. 104), s. 1; Punishment of Offences Act, 1837 (7 Will. 4 & 1 Vict. c. 91), s. 1.

(*i*) *Ibid.*, Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*k*) Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1.

(*l*) Unlawful Oaths Act, 1812 (52 Geo. 3, c. 104), s. 2.

(*m*) Unlawful Societies Act, 1799 (39 Geo. 3, c. 79), s. 2; Seditious Meetings Act, 1817 (57 Geo. 3, c. 19), s. 25. There are exceptions in favour of Freemasons' lodges (Unlawful Societies Act, 1799 (39 Geo. 3, c. 79), ss. 5—7; Seditious Meetings Act, 1817 (57 Geo. 3, c. 19), s. 26), if certain formalities are complied with, the Society of Quakers, and societies formed for purposes of a religious or charitable nature only in which no other business is discussed (s. 2) Seditious Meetings Act, 1817 (57 Geo. 3, c. 19), s. 27). By the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 32, registered friendly societies are not to be affected by the above statutes, if no other business is discussed at their meetings than that which relates to the objects of the society, and if, when required by two justices, they give full information of the nature, objects, proceedings and practices of the society. In s. 1 of the Unlawful Societies Act, 1799 (39 Geo. 3, c. 79), certain societies are expressly named as unlawful, but these have now ceased to exist.

(*n*) 37 Geo. 3, c. 123.

(*o*) 52 Geo. 3, c. 104.

(*p*) Unlawful Societies Act, 1799 (39 Geo. 3, c. 79), s. 2; Seditious Meetings Act, 1817 (57 Geo. 3, c. 19), s. 25.

or directly or indirectly maintains correspondence or intercourse with it or any division etc. of it, or aids, abets, or supports such a society or any of its members or officers as such, is guilty of a misdemeanour (*q*). Proceedings can only be taken in the name of one of the law officers of the Crown (*r*).

The punishment for this offence upon conviction or indictment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*s*). A person who knowingly permits any meeting of any society which is an unlawful combination or confederacy, or of any division etc. of such society, to be held in any house etc. belonging to him or in his possession or occupation commits an offence for which he is liable to forfeit £5; if he commits such offence a second time, he is to be deemed guilty of an unlawful combination and conspiracy in breach of the Seditious Meetings Act (*t*).

SUB-SECT. 5.—*Unlawful Drilling.*

Unlawful drilling.

917. All meetings and assemblies of persons for the purpose of training or drilling themselves or of being trained or drilled to the use of arms or practising military evolutions without lawful authority from the King or the lord lieutenant or two justices of the county are prohibited by law (*u*).

A person who attends such a meeting for the purpose of drilling others commits a misdemeanour and is liable to penal servitude for not more than seven nor less than three years, or to imprisonment with or without hard labour for not more than two years; a person who attends such a meeting for the purpose of being drilled is liable to be fined and to be imprisoned for not more than two years (*x*).

The prosecution must be commenced within six months after the commission of the offence (*y*).

Any justice, or constable, or peace officer, or any person acting in the aid of such justice etc., may disperse any such meeting and arrest any persons present at or aiding any such meeting (*z*).

Drilling is not illegal, if it is merely to enable persons to march in a procession with ease and regularity (*a*).

(*q*) Unlawful Societies Act, 1799 (39 Geo. 3, c. 79), s. 2.

(*r*) Seditious Meetings Act, 1846 (9 & 10 Vict. c. 33), s. 1.

(*s*) Unlawful Societies Act, 1799 (39 Geo. 3, c. 79), s. 8; Seditious Meetings Act, 1817 (57 Geo. 3, c. 19), s. 25; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The accused may be proceeded against summarily, in which case the punishment is three months' imprisonment or a fine of £20 (*ibid.*). These offences are not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*t*) Seditious Meetings Act, 1817 (57 Geo. 3, c. 19), s. 28. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1.

(*u*) Unlawful Drilling Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 1), s. 1.

(*x*) *Ibid.*, s. 1; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*y*) Unlawful Drilling Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 1), s. 7.

(*z*) *Ibid.*, s. 2.

(*a*) *R.* v. *Hunt* (1820), 1 State Tr. (N. S.) 171, 446. As to the form of

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Every person who makes or sells arms knowing that they are to be used for an unlawful purpose is guilty of a misdemeanour which is punishable by fine or imprisonment (*b*).

SUB-SECT. 6.—*Going Armed.*

Going armed.

918. Everyone is by statute (*c*) guilty of a misdemeanour who comes before the King's justices or other his ministers during their office with force and arms, or brings force "in affray of the peace," or goes armed by night or day in any fair, market, or in the presence of the King's justices or other ministers, or elsewhere, in such a manner as to terrify the King's subjects (*d*).

The punishment is forfeiture of the arms carried and imprisonment at the King's pleasure (*e*).

A man who has been threatened is not justified in going armed in public under such circumstances as to terrify others. But it is no offence for persons to wear common weapons upon occasions in which it is the common practice to wear them, where there can be no suspicion of an intention to commit any act of violence or disturbance of the peace (*f*).

SUB-SECT. 7.—*Breach of the Peace.*

Affray.

919. If two or more persons fight in a public place to the terror of the King's subjects, this constitutes an affray and is a misdemeanour at common law, punishable with fine and imprisonment without hard labour (*g*). Fighting in a private place, or at some distance from the highway in a place where no others are present than those who are aiding and abetting, does not amount to an affray (*h*), but an assembly for such a purpose is unlawful, and the parties concerned may be convicted of assault, or of taking part in an unlawful assembly.

Duels.

A duel fought in a public place is an affray; and, whether it be fought in public or in private, it is a misdemeanour at common law, even though no injuries are inflicted (*i*).

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indictment in cases under this statute, see *Gogarty* v. *R.* (1849), 3 Cox, C. C. 306 (Ir.).

(*b*) *R.* v. *Knowles* (1820), 1 State Tr. (N. S.) 498; *R.* v. *Morris* (1820), *ibid.* 522, 526.

(*c*) Stat. (1328) 2 Edw. 3, c. 3. The statute contains exceptions in favour of the King's servants and officers, and of those who are summoned upon a cry for arms to keep the peace. The offence of going armed to terrify the King's subjects is also a common law misdemeanour.

(*d*) *Knight's (Sir John) Case* (1686), 3 Mod. Rep. 117; *R.* v. *Dewhurst* (1820), 1 State Tr. (N. S.) 529. The statute has in modern times been applied to a case of discharging firearms in a public street (*R.* v. *Meade* (1903), 19 T. L. R. 540, WILLS, J.).

(*e*) Stat. (1328) 2 Edw. 3, c. 3. The offence is, it seems, triable at quarter sessions.

(*f*) 3 Co. Inst. 160 *et seq.*; 1 Hawk. P. C., c. 28, ss. 8, 9; Bill of Rights (1688) (1 Will. & Mar., sess. 2, c. 2).

(*g*) Termes de la Ley, tit. Affray; 1 Hawk. P. C., c. 28, s. 1. The word is from Fr. "*effrayer*," to put in fear. The indictment must allege that the fighting was in a public street or place (*R.* v. *O'Neill* (1871), 6 I. R. C. L. 1).

(*h*) *R.* v. *Hunt* (1845), 1 Cox, C. C. 177.

(*i*) 3 Co. Inst. 157; 1 Hawk. P. C., c. 28, s. 21; Fost. 297. See also, as to duelling, p. 578, *post.*

Quarrelsome and threatening words will not in themselves amount to an affray (*k*).

Challenges.

920. It is a common law misdemeanour verbally or in writing either to challenge a person to fight or to endeavour to provoke a person to give such a challenge (*l*). No amount of provocation will excuse the offender (*m*). If a challenge, or a letter inciting to a challenge, be written and sent, it is immaterial that it was not received by the person to whom it was addressed (*n*).

Punishment.

921. The above offences are triable at quarter sessions (*o*), and are punishable with fine and imprisonment without hard labour (*p*).

SUB-SECT. 8.—*Unlawful Assemblies.*

Unlawful assembly.

922. An unlawful assembly (*q*) is an assembly of three or more persons with intent either to commit a crime by open force or to carry out any common purpose, lawful or unlawful, in such a manner as to give firm and courageous persons (*r*) in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it (*s*). To take part in an unlawful assembly is a common law misdemeanour, punishable with fine and imprisonment without hard labour (*t*).

What constitutes.

923. An assembly which was originally lawful may become unlawful, if a proposal is made at such meeting to do an act of violence to the disturbance of the public peace and such proposal is acted upon (*u*). If persons are assembled for an innocent purpose and with no intention of carrying it out unlawfully, as, *e.g.*, for the purpose of a peaceable street procession, their meeting is not rendered unlawful by the fact that they may have good reason to believe that their proceedings will be opposed and a breach of the peace be committed by those opposing them (*v*). But persons so assembled are guilty of a misdemeanour, if they have determined to carry out their purpose by themselves using force (*w*).

(*k*) 1 Hawk. P. C., c. 28, s. 2.

(*l*) 1 Hawk. P. C., c. 28, s. 3; Stephen, Digest Criminal Law, 6th ed., 54; *R.* v. *Philipps* (1805), 6 East, 464.

(*m*) *R.* v. *Rice* (1803), 3 East, 581.

(*n*) *R.* v. *Williams* (1810), 2 Camp. 506.

(*o*) Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1.

(*p*) See p. 410, *ante*.

(*q*) The above definition is taken from Stephen, Digest Criminal Law, 6th ed., 55; see also 1 Hawk. P. C., c. 28, ss. 9, 10.

(*r*) *R.* v. *Vincent* (1839), 9 C. & P. 91.

(*s*) *R.* v. *Hunt* (1820), 3 B. & Ald. 566; *Redford* v. *Birley* (1822), 1 State Tr. (N. S.) 1071, 1217, n., 1227; *R.* v. *Graham and Burns* (1888), 16 Cox, C. C. 420.

(*t*) This offence is triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1). The power to give hard labour in case of a conviction for a riot does not, it seems, extend to a conviction for an unlawful assembly (Hard Labour Act, 1822 (3 Geo. 4, c. 114)).

(*u*) 1 Hawk. P. C., c. 28, s. 3; *R.* v. *Graham and Burns*, *supra*, at p. 434.

(*v*) *Beatty* v. *Gillbanks* (1882), 9 Q. B. D. 308; *R.* v. *Clarkson* (1892), 17 Cox, C. C. 483, C. C. R.

(*w*) *R.* v. *Graham and Burns*, *supra*, at p. 433.

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A man may gather together his friends and servants to defend his own house against persons threatening to enter it unlawfully (*x*), but it is unlawful for him to assemble his friends for the defence of his person against those who threaten to beat him outside his house, as when he is on his way to market, for it is then his duty to appeal to the protection of the law (*a*).

Defence of a man's house.

Prize-fighting.

924. Prize-fighting is illegal, and a meeting for the purpose of holding a prize-fight is an unlawful assembly, and all persons present for the purpose of encouraging the principals to fight may be convicted of the offence of taking part in an unlawful assembly or of an assault (*b*).

Taking part in unlawful assembly.

925. All persons who convene or who take part in the proceedings of an unlawful assembly are guilty of the offence of taking part in an unlawful assembly. Persons present by accident or from curiosity alone without taking any part in the proceedings are not guilty of that offence (*c*), even though such persons possess the power of stopping the assembly and fail to exercise such power (*d*).

Meetings within a mile of Westminster Hall.

926. Meetings are unlawful which consist of more than fifty persons assembled in any street, square, or open place within one mile from Westminster Hall for the purpose or on the pretext of considering or preparing any petition, complaint, remonstrance, declaration, or other address to the King or to both Houses or either House of Parliament for alteration of matters in Church or State or which are convened for any day on which either House of Parliament shall meet and sit, or shall be summoned, adjourned, or prorogued to meet or sit, or for any day on which the High Court of Justice meets at the Royal Courts of Justice (*e*).

Meetings for the election of members of Parliament, and of persons attending upon the business of Parliament or at the High Court, are not unlawful (*f*).

Tumultuous petitioning.

927. Anyone is by statute (*g*) guilty of a misdemeanour who repairs to the King, or to both or either of the Houses of Parliament, upon pretence of presenting or delivering any petition etc.,

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(*x*) 1 Hawk. P. C., c. 28, s. 10; but apparently he must not do so for the purpose of defending his close (*R.* v. *Bangor* (*Bishop*) (1796), 1 Russell on Crimes, 6th ed., 570).

(*a*) 1 Hale, P. C. 547; Y. B. 21 Hen. 7, 39A; 1 Hawk. P. C., c. 28, s. 10; *R.* v. *Soley* (1707), 11 Mod. Rep. 115, 116. This principle does not apply to cases of sudden emergency, in which the bystanders are entitled to intervene to prevent an assault (1 Hawk. P. C., c. 28, ss. 11, 12).

(*b*) *R.* v. *Billingham* (1825), 2 C. & P. 234; see the observations of CAVE, J., on this case in *R.* v. *Coney* (1882), 8 Q. B. D. 534, 542. As to prize-fighting, see also p. 582, *post*.

(*c*) *R.* v. *Rankin* (1848), 6 State Tr. (N. S.) 711, 789.

(*d*) *R.* v. *Atkinson* (1869), 11 Cox, C. C. 330, *per* KELLY, C.B. But their mere presence will in the absence of explanation probably afford some evidence of participation (*R.* v. *Coney*, *supra*).

(*e*) Seditious Meetings Act, 1817 (57 Geo. 3, c. 19), s. 23.

(*f*) *Ibid.* As to disturbance of public meetings, see Public Meeting Act, 1908 (8 Edw. 7, c. 66).

(*g*) 13 Car. 2, stat. 1, c. 5, s. 1. See *R.* v. *Gordon* (*Lord George*) (1781), 2 Doug. (K. B.) 591, 592.

accompanied with an excessive number of persons, or at one time with more than ten persons.

The offenders must be prosecuted within six months of the offences being committed. The evidence of two credible witnesses is required (*h*).

The penalty for this offence is £100 and three months' imprisonment (*i*).

It is not, however, unlawful for persons not exceeding ten in number to present any public or private complaint to any member of Parliament, or to the King, for any remedy to be had thereon; nor is it unlawful for members of Parliament to present any address to the King during the sitting of Parliament (*k*).

SUB-SECT. 9.—*Rout and Riot.*

Rout.

928. A rout is a disturbance of the peace by persons assembling together with an intention to do anything which, if it be executed, will make them rioters, and who actually make a motion towards the execution of it (*l*). A rout in itself constitutes a common law misdemeanour which is punishable by fine and imprisonment, but where the intention is in any degree effected, it is usually prosecuted as a riot.

Riot.

929. A riot is a tumultuous disturbance of the peace by three or more persons (*m*), who assemble together, without lawful authority, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature (*n*), and who afterwards actually begin or execute the same in a violent and turbulent manner to the terror of the people (*o*). It is immaterial whether the enterprise intended was of itself lawful or unlawful (*p*), and it is sufficient if only one person was put in fear (*q*).

If persons meet on a lawful occasion but suddenly quarrel and fight, this is not a riot, but is an affray, of which only those are guilty who actually engage in it. If the persons so present form themselves into parties upon the dispute arising, with promises of mutual assistance, and then make an affray, they are guilty of a riot.

(*h*) 13 Car. 2, stat. 1, c. 5, s. 1. By virtue of this statute the offence is triable at quarter sessions, but see Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1.

(*i*) *Ibid.*

(*k*) *Ibid.*

(*l*) 1 Hawk. P. C., c. 28, s. 8; Stephen, Digest Criminal Law, 6th ed., 56. As to the duties and powers of justices and others in suppressing unlawful assemblies and riots, see p. 472, *post*. A rout is triable at quarter sessions.

(*m*) *R.* v. *Scott* (1761), 3 Burr. 1262.

(*n*) If the enterprise is of a public nature, the offence amounts to treason (p. 453, *ante*).

(*o*) *R.* v. *Hughes* (1830), 4 C. & P. 373; *Field* v. *Metropolitan Police* (*Receiver*), [1907] 2 K. B. 853.

(*p*) 1 Hawk. P. C., c. 28, ss. 1, 7; Stephen, Digest Criminal Law, 56; *R.* v *Graham and Burns* (1888), 16 Cox, C. C. 420, 427.

(*q*) *R.* v. *Phillips* (1842), 2 Mood. C. C. 252. It would seem that where in the course of the tumultuous assembly an act of violence is done, it is not necessary to allege in the indictment that the proceeding was *in terrorem populi* (*R.* v. *Soley* (1707), 11 Mod. Rep. 115, *per* HOLT, C.J., at p. 117).

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If persons are gathered on an innocent occasion, and a sudden proposal is made that they should go in a body to do any act of violence, *e.g.*, to pull down a house, and such motion is agreed to and executed, this constitutes a riot (*r*). Where the meeting is for the purpose of enforcing a claim of right, as, *e.g.*, by pulling down an alleged unlawful inclosure, this does not amount to a riot, provided no excessive number of persons are present and there is no use of threatening words or gestures or of more violence than is necessary for the purpose (*s*).

All persons who take part in a riot are guilty of a misdemeanour at common law, which is punishable by fine and imprisonment with or without hard labour (*t*).

Riot Act.

930. If any persons to the number of twelve or more are unlawfully, riotously, and tumultuously assembled together to the disturbance of the public peace, it is the duty of the justices of the peace, or the sheriff or under-sheriff of the county, or the mayor, bailiff, or other head officer, or justices of the peace of any city or town corporate where such assembly is gathered, to go to the place where the rioters are assembled and make a proclamation in a prescribed form ordering them to disperse (*v*). If persons to the number of twelve or more unlawfully, riotously, and tumultuously remain or continue together for one hour after such proclamation is made (*a*), they are guilty of felony (*b*). An indictment based on the Riot Act need not allege that the assembly was to the public terror (*c*).

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*d*).

(*r*) 1 Hawk. P. C., c. 28, s. 3; Stephen, Digest Criminal Law, 6th ed., 56; *Anon.* (1703), 6 Mod. Rep. 43.

(*s*) *R.* v. *Soley* (1707), 11 Mod. Rep. 115; *Clifford* v. *Brandon* (1810), 2 Camp. 358, 369, 370.

(*t*) Hard Labour Act, 1822 (3 Geo. 4, c. 114). The offence is triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*v*) Riot Act, 1714 (1 Geo. 1, stat. 2, c. 5). The following is the form prescribed by s. 2 of that Act:—"Our sovereign lord the King chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business upon the pains contained in the Act made in the first year of King George for preventing tumults and riotous assemblies. God save the King." The same section provides that the proclamation is to be made amongst the rioters, or as near to them as the justice can safely come, with a loud voice, and after he has commanded silence while the proclamation is made. The words of the statutory proclamation must be read verbatim (*R.* v. *Child* (1830), 4 C. & P. 442, where a prosecution for felony based on the Riot Act failed, because the words "God save the King" were omitted from the proclamation).

(*a*) If the proclamation is made more than once, the hour will be computed from the time of the first reading (*R.* v. *Woolcock* (1833), 5 C. & P. 516). The fact that the accused has absented himself for a minute or two is no defence, if he substantially continued making part of the assembly for the hour (*R.* v. *James* (1831), 1 Russell on Crimes, 573—4).

(*b*) Riot Act, 1714 (1 Geo. 1, stat. 2, c. 5), s. 1.

(*c*) *R.* v. *James* (1831) 5 C. & P. 153.

(*d*) Punishment of Offences Act, 1837 (7 Will. 4 & 1 Vict. c. 91), s. 1;

931. A person who wilfully and knowingly opposes, obstructs, hinders, or hurts any person beginning or going to make such proclamation whereby such proclamation is not made, is, with the persons who remain for one hour after knowledge of such obstruction, guilty of felony and punishable in the same way (*e*).

Hindering proclamation.

932. Proceedings for offences under this statute must be commenced within twelve months after the commission of the offence (*f*).

Proceedings.

A riot is none the less a riot because the statutory proclamation has not been made. If the proclamation is not made, the common law offence remains (*g*).

Riotous demolition of buildings etc.

933. All persons are by statute (*h*) guilty of felony who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force demolish or begin to demolish, pull down and destroy any church or other place of divine worship or any house or other building, or any machinery employed in any manufacture or in mining.

Riotously preventing the loading etc. of a ship.

934. Seamen, keelmen, casters, ship carpenters, or other persons are by statute (*i*) guilty of a misdemeanour who, being riotously assembled together to the number of three or more, unlawfully and with force prevent or obstruct the loading, unloading, sailing or navigating of any ship or other vessel; or unlawfully board a ship to prevent or obstruct the loading, unloading, sailing or navigating thereof.

The punishment for this offence upon conviction is imprisonment with or without hard labour for not more than twelve months (*a*).

The prosecution must be commenced within twelve months after the commission of the offence (*b*).

Suppression of riots.

935. Any private person may lawfully appease riots and may make use of weapons for that purpose. Officers of justice are entitled to call upon private persons to assist them in suppressing a riot, and if such persons refuse, they are liable on indictment to fine and imprisonment (*c*).

Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), s. 2; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*e*) Riot Act, 1714 (1 Geo. 1, stat. 2, c. 5), s. 5.

(*f*) *Ibid.*, s. 8.

(*g*) *R.* v. *Fursey* (1833), 6 C. & P. 81.

(*h*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 11.

(*i*) Shipping Offences Act, 1793 (33 Geo. 3, c. 67), ss. 1—8. A person who offends the second time is guilty of a felony, and is liable to penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*ibid.*, s. 3; Penal Servitude Act, 1891 (54 & 55 Vict. c 69), s. 1). The offence is triable at quarter sessions (Shipping Offences Act, 1793 (33 Geo. 3, c. 67), ss. 1, 3).

(*a*) Shipping Offences Act, 1793 (33 Geo. 3, c. 67), s. 1.

(*b*) *Ibid.*, s. 8.

(*c*) 1 Hawk. P. C., c. 28, s. 11; *R.* v. *Pinney* (1832), 5 C. & P. 254, 261, 263; *R.* v. *Brown* (1841), Car. & M. 314; *R.* v. *Sherlock* (1866), L. R. 1 C. C. R. 20. The indictment may be preferred at quarter sessions.

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Power is given by statute (*d*) to justices of the peace and the sheriff or under-sheriff to arrest rioters, with the *posse comitatus* if need be, and to record what they shall find to have been done in their presence against the law, and by such record the offenders may be convicted in the same manner and form as under the Statute of Forcible Entries (*e*). It is the duty of sheriffs, under-sheriffs, justices of the peace, and constables to do all that in them lies to suppress riots, and if they negligently fail to take proper steps for that purpose, they are punishable by fine or imprisonment (*f*).

A peace officer is required to act as a man of ordinary prudence, firmness, and activity would act. A reasonable fear may excuse him, if it is a fear arising from such danger as would affect a firm man. He is entitled to call the military, as also any other citizens, to his assistance, but he is not bound to go with them (*g*).

A justice of the peace is only justified in dispersing a meeting which is in fact unlawful; it is not sufficient that he had reasonable grounds for believing, and did in fact believe, it to be unlawful, unless he also had reasonable grounds to believe that the peace would be broken if the meeting were not dispersed (*h*).

SUB-SECT. 10.—*Forcible Entry and Detainer.*

Forcible entry.

936. Any person is guilty of a misdemeanour both at common law (*i*) and by statute (*j*) who enters forcibly upon any lands or tenements without due warrant of law (*k*).

In order to constitute the offence it is not necessary that there should be actual violence to the person of anyone. It is sufficient, if there is any kind of violence in the manner of entry, as by breaking open the doors of a house, whether any person be therein or not, or by threats to those in possession giving them just cause to fear that bodily hurt will be done to them, if they do not give up possession, or by going to the premises armed or with such an

(*d*) (1411) 13 Hen. 4, c. 7, s. 1. The statute also contains provisions for the conviction, after due proclamation, of rioters in their absence; see also stat. (1393) 17 Ric. 2, c. 8.

(*e*) See *infra*.

(*f*) (1414) 2 Hen. 5, stat. 1, c. 8; *R.* v. *Kennett* (1781), 5 C. & P. 282, n.; *R.* v. *Pinney* (1832), 5 C. & P. 254; *R.* v. *Neale* (1839), 9 C. & P. 431; see also *R.* v. *Graham and Burns* (1888), 16 Cox, C. C. 420, 430. The offence is triable at quarter sessions.

(*g*) *Ibid.*

(*h*) *O'Kelly* v. *Harvey* (1883), 15 Cox, C. C. 435, C. A.; compare *Beatty* v. *Gillbanks* (1882), 9 Q. B. D. 308.

(*i*) *R.* v. *Blake* (1765), 3 Burr. 1731; *R.* v. *Wilson* (1799), 8 Term Rep. 357; see, however, 1 Hawk. P. C., c. 28, s. 2.

(*j*) Stat. (1381) 5 Ric. 2, stat. 1, c. 7, which forbids that any man should make any entry into any lands or tenements except in case where entry is given by the law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner; see also stats. 15 Ric. 2, c. 2 (1391), 4 Hen. 4, c. 8 (1402), and 8 Hen. 6, c. 9 (1429). A sheriff or other officer who is acting in execution of a judgment of a court of law ordering delivery of possession of property is entitled to use force, if he is resisted in the execution of the judgment (see Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 8 (2)). Resistance to the sheriff in such circumstances is a statutory misdemeanour, punishable with fine and imprisonment (*ibid.*).

(*k*) 1 Hawk. P. C., c. 28. It is doubtful whether an infant can be guilty of this offence (see note (*q*) on p. 240, *ante*).

unusual number of persons as plainly to show that force will be resorted to (*l*). A mere trespass will not support an indictment for forcible entry. There must be proof of either such force, or such show of force, as is calculated to prevent any resistance (*m*).

937. Entry obtained through an unclosed window or by opening a door with a key, or by means of threats to despoil a man's goods (*n*), or by enticing the owner out of possession or excluding him when he is out (*o*), is not a forcible entry. Nature of entry.

A person is not guilty of forcible entry who, although pretending title to land, merely passes over it, with or without attendants armed or unarmed, on his way to church, or to market, or for such like purpose, providing he does no act which either expressly or impliedly amounts to a claim to the lands (*p*). If a man enters peaceably into a house, but turns the occupant out of possession by force, this may be a forcible entry (*q*). If a man enters with force to distrain for rent in arrear, this is a forcible entry, for although he does not claim the land itself, he claims a right out of it (*r*).

A lessee who with force resists a distress for rent, or who forestalls (*s*) or rescues the distress, is guilty of a forcible detainer (*t*).

The offence of forcible entry may be committed with regard to ecclesiastical possessions, as churches, vicarages, or tithes (*u*).

There can be no forcible entry upon an easement, such as a right of way (*a*).

938. A forcible entry may be committed by one or by many. If several persons come together to make an unlawful entry on premises, and all of them except one enter in a peaceable manner, and that one only uses force, it is a forcible entry in them all, as they went in company to do an unlawful act (*b*). Number of persons.

939. It is no defence to a person who has forcibly entered on land in the possession of another that he was entitled to possession or had a legal right of entry (*c*). But a mere trespasser cannot by Trespassers.

(*l*) 1 Hawk. P. C., c. 28, ss. 26, 27; Stephen, Digest Criminal Law, 6th ed., 61; *Milner* v. *Maclean* (1825), 2 C. & P. 17.

(*m*) *R.* v. *Blake* (1765), 3 Burr. 1731; *R.* v. *Wilson* (1799), 8 Term Rep. 357; *R.* v. *Smyth* (1832), 5 C. & P. 201.

(*n*) 1 Hawk. P. C., c. 28, ss. 26, 28.

(*o*) Com. Dig. tit. Forceable Entry, A, 3.

(*p*) *Ibid.*; 1 Hawk. P. C., c. 28, ss. 20, 21.

(*q*) Bac. Abr. tit. Forcible Entry and Detainer, B; *Edwick* v. *Hawkes* (1881), 18 Ch. D. 199, 210. But see Cole on Ejectment, pp. 689, 690.

(*r*) Bac. Abr., *supra*.

(*s*) *I.e.*, stops the landlord's way with force and arms; see Co. Litt. 161 b.

(*t*) Com. Dig. tit. Forceable Entry, B (1), p. 343. Merely shutting the door would not be a forcible resistance (*ibid.* Forceable Entry, 343).

(*u*) *Ibid.*, C; 1 Hawk. P. C., c. 28, s. 31.

(*a*) *R.* v. *Holmes* (1670), 1 Mod. Rep. 73.

(*b*) Bac. Abr. tit. Forcible Entry and Detainer, B.

(*c*) *Newton* v. *Harland* (1840), 1 Man. & G. 644; *Edwick* v. *Hawkes* (1881), 18 Ch. D. 199; *Taunton* v. *Costar* (1797), 7 Term Rep. 431, 432; *R.* v. *Child* (1846), 2 Cox, C. C. 102; *R.* v. *Studd* (1866), 14 L. T. 633, C. C. R.; *Lows* v. *Telford* (1876), 1 App. Cas. 414. A licence contained in a lease authorising the lessor to eject the lessee forcibly for breach of covenant or at the end of the term is void as being a licence to commit an act forbidden by the Statute of Forcible Entry (*Edwick* v. *Hawkes*, *supra*).

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the very act of trespass immediately, and without acquiescence by the rightful possessor, give himself possession in any legal sense as against the person whom he ejects (*d*), and the latter is entitled to use force in turning him out, provided he does him no personal injury (*e*). A person who claims not the land, but the mere custody of it as against the defendant, may be forcibly expelled by the latter (*f*). A joint tenant or a tenant in common may be indicted for the forcible expulsion of his co-tenant (*g*). A wife may be indicted for a forcible entry upon land in the possession of her husband (*h*).

The punishment for this offence is imprisonment without hard labour, and fine (*i*).

Forcible detainer.

940. A person is by common law and by statute (*j*) guilty of a misdemeanour who, except in the cases hereafter mentioned, maintains by force the possession of lands or tenements, whether such possession was lawful in its origin or not.

The same circumstances of violence or terror which make an entry forcible make a detainer forcible also; but a bare refusal to leave a house and a continuing therein do not amount to a forcible detainer (*k*). The forcible continuance in possession by a tenant whose term has expired, or by a mortgagor after the mortgagee is entitled to take possession, or the forcible resistance by a tenant to a distress for rent, is a forcible detainer (*l*). Those who keep possession with force any lands and tenements, whereof they or their ancestors, or they whose estate they have in such lands and tenements, have continued in possession for three years, are not within the statute (*m*). And a man may lawfully defend possession of his dwelling-house by force against a wrongful and forcible intruder (*n*).

Remedy.

941. The usual mode of prosecution is by indictment, but the justices have by statute (*o*) a summary jurisdiction, which, however, is now rarely exercised, and which, therefore, the court will not by mandamus compel them to exercise (*p*). The offence

(*d*) *Browne* v. *Dawson* (1840), 12 Ad. & El. 624; *Collins* v. *Thomas* (1859), 1 F. & F. 416.

(*e*) *Scott* v. *Matthew Brown & Co., Ltd.* (1884), 51 L. T. 746; and see *Beddall* v. *Maitland* (1881), 17 Ch. D. 174, 188.

(*f*) 1 Hawk. P. C., c. 28, s. 32.

(*g*) *Ibid.*, s. 33.

(*h*) *R.* v. *Smyth* (1832), 5 C. & P. 201.

(*i*) Stat. (1381) 5 Ric. 2, stat. 1, c. 7. There is no limit either to the period of imprisonment or the amount of the fine. The offence is triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1; Dickinson's Quarter Sessions, 6th ed., 375).

(*j*) 15 Ric. 2, c. 2 (1391); 8 Hen. 6, c. 9 (1429). The offence is triable at quarter sessions.

(*k*) 1 Hawk. P. C., c. 28, s. 30.

(*l*) Com. Dig. tit. Forceable Entry, B, 1; and see *Lows* v. *Telford*, *supra*.

(*m*) Stat. 8 Hen. 6, c. 9 (1429); stat. 31 Eliz. c. 11 (1588).

(*n*) 1 Hale, P. C. 486.

(*o*) Stat. 15 Ric. 2, c. 2 (1391); stat. 8 Hen. 6, c. 9 (1429).

(*p*) *Ex parte Davy* (1842), 2 Dowl. (N. S.) 24. See further as to the summary jurisdiction, Com. Dig. tit. Forceable Entry, D; *R.* v. *Oakley* (1832), 4 B. & Ad. 307, in which it was held that justices have only such summary jurisdiction in a case of forcible detainer, if the entry of the person detaining was unlawful; *R.* v.

is triable at quarter sessions, and the punishment is fine and imprisonment.

Restitution.

942. The court in which the proceedings take place may award restitution of the lands which have been forcibly entered or detained (*q*), but no restitution can be ordered, where the person indicted has been in quiet possession for three years before the date of the indictment (*r*).

The writ of restitution may at the discretion of the judge be awarded immediately upon the finding of the bill of indictment by the grand jury (*s*).

SUB-SECT. 11.—*Disturbing Public Worship.*

Disturbing public worship.

943. A person is by statute (*t*) guilty of a misdemeanour (1) who of his own power and authority maliciously or contemptuously molests, disturbs, or troubles any preacher, duly licensed or otherwise lawfully authorised, in his sermon, or any parson, vicar, or priest in performing divine service or celebrating the sacraments of the Church; or (2) who unlawfully and maliciously of his own authority pulls down or defaces any altar, crucifix, or cross in any church or churchyard. This offence is punishable by committal to prison by justices for three months and to the next quarter sessions, where, if the offender repents, he is to be discharged upon

Punishment.

Wilson (1835), 3 Ad. & El. 817; *Attwood* v. *Joliffe* (1848), 3 New Sess. Cas. 116. As to mandamus, see title CROWN PRACTICE.

(*q*) 8 Hen. 6, c. 9 (1429); 21 Jac. 1, c. 15 (1623).

(*r*) 31 Eliz. c. 11 (1588).

(*s*) *R.* v. *Harland* (1838), 8 Ad. & El. 826. If a writ of restitution is so granted, and the defendant is afterwards acquitted on the indictment or the indictment is quashed, a *supersedeas* may be obtained either from the justices who granted the writ of restitution or from the King's Bench Division of the High Court. The granting of a writ of *certiorari* by the High Court itself operates as a *supersedeas*, if the writ of restitution has not been executed. If possession has been obtained by the prosecutor under the writ of restitution, the King's Bench Division will, if justice requires it, grant a writ of re-restitution to the defendant (1 Hawk. P. C., c. 28, ss. 61—66; Bac. Abr. Forcible Entry and Detainer, G). The indictment may be removed by *certiorari* into the High Court, and after the conviction of the defendant an application may be made to that court for the writ of restitution, to which it would appear that the prosecutor is entitled as of right (see *R.* v. *Williams* (1829), 4 Man. & Ry. (K. B.) 471). For the purpose of applying for the writ of restitution the indictment should allege not only that the prosecutor was in possession of the land, but also that he was seised of it (*R.* v. *Hoare* (1817), 6 M. & S. 266).

(*t*) Stat. (1553) 1 Mar. sess. 2, c. 3, s. 1. This Act applies to the present services of the Established Church (*Creswick* v. *Rooksby* (1613), 2 Bulst. 47; *Moone's Case* (1682), T. Jo. 159). The service must be actually proceeding at the time (*Williams* v. *Glenister* (1824), 2 B. & C. 699). To disturb a priest of the Established Church in the performance of divine worship appears to be a misdemeanour at common law (*R.* v. *Parry* (1686), Tremaine's Pleas of the Crown, 239; and see *Wilson* v. *Greaves* (1757), 1 Burr. 240, 243; *R.* v. *Cheere* (1825), 4 B. & C. 902). By the Act of Uniformity (1 Eliz. c. 2), s. 3, pecuniary penalties are imposed upon persons who by deed or open threatenings compel a minister in any cathedral, parish church, chapel, or other place to sing or say any prayer other than that contained in the Prayer Book, or who by the same means unlawfully interrupt such a minister in singing or saying common prayer. The punishment for a third offence is the forfeiture of all goods and chattels and imprisonment for life.

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giving security for good behaviour, or otherwise to be committed, until he does repent (*a*).

Disturbing religious meetings.

944. The churches and meeting-houses of all religious bodies are now equally protected. A person is by statute guilty of a misdemeanour who wilfully and maliciously or contemptuously (1) disquiets or disturbs any meeting or congregation of persons assembled for religious worship; or (2) disturbs or molests any preacher or person there officiating, or any person present (*b*).

The punishment for this offence on conviction at quarter sessions (*c*) is a fine of £40 (*d*).

Obstructing a clergyman.

945. A person is by statute (*e*) guilty of a misdemeanour (1) who by threats or force obstructs or prevents, or endeavours to obstruct or prevent, any clergyman or other minister from celebrating divine service or otherwise officiating in any church, meeting-house, or other place of divine worship, or in the lawful burial of the dead in any churchyard or other burial place; or (2) offers violence to, or arrests upon any civil process, any clergyman or other minister while so engaged, or about to be engaged, in such duties, or while going to or returning from the performance thereof.

The punishment for this offence is imprisonment for two years, with or without hard labour (*f*).

(*a*) An offender against this statute may be arrested "immediately and forthwith" by any constable, churchwarden, or any other officer or any other person present when the offence is committed (1 Mar. sess. 2, c. 3, s. 1).

(*b*) Places of Religious Worship Act, 1812 (52 Geo. 3. c. 155), s. 12.

(*c*) The indictment must be found at quarter sessions, but may be removed by *certiorari* to the King's Bench Division of the High Court and tried there (*R.* v. *Wadley* (1816), 4 M. & S. 508).

(*d*) Places of Religious Worship Act, 1812 (52 Geo. 3, c. 155), s. 12. The assemblies for religious worship allowed by this Act, and which alone were protected, were meetings of Protestants at places duly certified and registered in the manner prescribed (s. 2), but Quakers' meetings were not included. By the Religious Disabilities Act, 1846 (9 & 10 Vict. c. 59), s. 4, all laws then in force against the disturbing of any meeting of persons assembled for religious worship permitted by any former Acts were applied to all meetings whatsoever of persons lawfully assembled for that purpose. By the Places of Worship Registration Act, 1855 (18 & 19 Vict. c. 81), s. 2, places of public worship of Protestant Dissenters and of Roman Catholics are required to be certified to the Registrar-General; this Act is applied to Jewish places of worship by the Liberty of Religious Worship Act, 1855 (18 & 19 Vict. c. 86), s. 2. The offence of disturbing a religious service is also known as brawling, and may be prosecuted under the Ecclesiastical Courts Jurisdiction Act, 1860 (23 & 24 Vict. c. 32), s. 2, which provides that any person who is guilty of riotous, violent, or indecent behaviour in any church or chapel of the Church of England, or in any chapel of any religious denomination, or in any place of worship duly certified under the Places of Worship Registration Act, 1855 (18 & 19 Vict. c. 81), whether during the celebration of divine service or at any other time, or in any churchyard or burial ground, or who molests or disturbs any clergyman or minister authorised to minister therein, shall be punishable on summary conviction by a fine of £5, or imprisonment, without fine, for two months. The offence can be committed by a clergyman who acts in a violent or indecent way in his own church or churchyard (*Vallancey* v. *Fletcher*, [1897] 1 Q. B. 265). It is no defence that the defendant in what he did was only asserting a *bonâ fide* claim of right (*Asher* v. *Calcraft* (1887), 18 Q. B. D. 607; see also *Kensit* v. *St. Paul's* (*Dean and Chapter*), [1905] 2 K. B. 249).

(*e*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 36.

(*f*) *Ibid.* The defendant may also be fined and ordered to find sureties for

Violent behaviour at a burial.

946. Every person is by statute guilty of a misdemeanour punishable by fine and imprisonment (1) who behaves in a riotous, violent, or indecent manner at any burial to which the Burial Laws Amendment Act, 1880 (*g*), applies; or (2) who wilfully obstructs such burial or any service thereat; or (3) who in a graveyard delivers any address not being part of or incidental to a religious service permitted by that Act, or not permitted by any lawful authority; or (4) who under colour of any religious service or otherwise in any such graveyard wilfully endeavours to bring into contempt or obloquy the Christian religion, or the belief or worship of any denomination of Christians, or the members or minister of any such denomination, or any other person (*h*).

SUB-SECT. 12.—*Offences by Jesuits etc.*

Jesuits etc. coming within the realm.

947. A person is by statute (*i*) guilty of a misdemeanour who, being a Jesuit or member of any other religious order or society of the Church of Rome, comes within the realm without a licence of a Secretary of State. The punishment for this offence is banishment for life (*j*).

Admitting a person to be a member of a religious order.

Every such person is by statute (*k*) guilty of a misdemeanour who within the United Kingdom admits any person to be a regular ecclesiastic or member of any such order or society, or administers any vow or engagement purporting to bind the person taking it to the rules of any such order or society. The punishment for this offence is fine and imprisonment without hard labour.

Any person so admitted commits a misdemeanour, and is liable to banishment for life (*k*).

The above provisions do not in any way affect religious orders consisting of females bound by religious or monastic vows (*l*).

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good behaviour. The offence is triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*g*) Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41), s. 7; see also s. 8, and title BURIAL AND CREMATION, Vol. III., p. 426.

(*h*) *Ibid.* The offence is triable at quarter sessions.

(*i*) Roman Catholic Relief Act, 1829 (10 Geo. 4, c. 7), ss. 29—31. An offender who has been sentenced to banishment and is at large in the United Kingdom after the end of three months from the sentence is liable to penal servitude for life or for not less than three years, or to imprisonment with or without hard labour for not more than two years (*ibid.*, s. 36). As to not obeying a sentence of banishment under the Act, see ss. 35, 36. It is doubtful whether this offence can be tried at quarter sessions (see Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*j*) *Ibid.*, s. 33.

(*k*) *Ibid.*, s. 34. See note (*i*), *supra*.

(*l*) *Ibid.*, s. 37. There has been no conviction under the provisions of this statute (see *R.* v. *Kennedy* (1902), 86 L. T. 753). Any person can institute a prosecution under this statute (*R.* v. *Kennedy*, *supra*). The Act also imposes pecuniary penalties upon any person who without being authorised by law assumes the name of archbishop of any province, bishop of any bishopric, or dean of any deanery in England or Ireland (*ibid.*, s. 24), and upon any Roman Catholic ecclesiastic, or Jesuit, or monk of any other religious order of the Church of Rome who exercises any of the rites or ceremonies of the Roman Catholic religion or wears the habits of his order, except within the usual place of worship of the Roman Catholic religion or in private houses (*ibid.*, s. 26); but proceedings to recover these penalties can only be instituted by the Attorney-General (*ibid.*, s. 38).

In September, 1908, the Government, in the interest of order, requested that at

SECT. 3. Offences by and in respect of Public Officers.

SECT. 3.—*Offences by and in respect of Public Officers.*

SUB-SECT. 1.—*Disclosure of Official Information.*

Official Secrets Act, 1889.

Unlawful obtaining or communicating official secrets.

948. A person is by statute (*m*) guilty of a misdemeanour who (1) for the purpose of wrongfully obtaining information enters any part of a fortress, arsenal, factory, dockyard, camp, ship, office, or other like place belonging to the King in which part such person is not entitled to be; or (2) for the like purpose, when lawfully or unlawfully in any such place, either obtains any document, sketch, plan, model, or knowledge of anything which he is not entitled to obtain, or takes without lawful authority any sketch or plan; or (3) for the like purpose, when outside any fortress, arsenal, factory, dockyard, or camp, takes or attempts to take without authority any sketch or plan thereof; or (4), knowingly having possession of or control over any such document, sketch, plan, model, or knowledge obtained by means of an offence against the Official Secrets Act, 1869, wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom it ought not in the interest of the State to be communicated at that time; or (5), having been intrusted in confidence by an officer under the King with any such document, sketch, plan, model, or information relating to any such place or to the naval or military affairs of His Majesty, wilfully and in breach of such confidence communicates the same, when in the interest of the State it ought not to be communicated.

The punishment for any of the above offences is imprisonment with or without hard labour for one year, or a fine, or both (*n*).

Communication of information.

949. A person is by statute (*o*) guilty of a misdemeanour, punishable in the same way, who, having possession of any such document, sketch, plan, model, or information relating to any fortress, arsenal, factory, dockyard, camp, ship, office, or other like place belonging to His Majesty, or to His Majesty's naval or military affairs, in whatever manner the same has been obtained, wilfully communicates it as aforesaid.

Communication of information to foreign states.

950. A person is by statute guilty of a felony who commits any of the above-mentioned offences (1) intending to communicate to a foreign State any information so obtained by or intrusted to him; or (2) if he communicates the same to any agent of a foreign State (*p*).

The punishment for such offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*q*).

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a procession contemplated in connection with the Eucharistic Congress in London, Roman Catholic vestments should not be worn or any Roman Catholic religious rites practised in the streets, and the wearing of the vestments and the carrying of the host in the streets were consequently abandoned (Annual Register, 1908, p. 196).

(*m*) Official Secrets Act, 1889 (52 & 53 Vict. c. 52), s. 1 (1).
(*n*) *Ibid.*
(*o*) *Ibid.*, s. 1 (2).
(*p*) *Ibid.*, s. 1 (3).
(*q*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

SECT. 3. Offences by and in respect of Public Officers.

Communication by officer.

951. A person who by means of his holding or having held an office under the King has lawfully or unlawfully obtained possession of or control over any document, plan, or model or acquired any information, and who at any time corruptly or contrary to his official duty attempts to communicate such document etc. to any person to whom in the public interest it ought not to be then communicated, is guilty of a breach of official trust (*r*).

If such communication is attempted to be made to a foreign State the offence is a felony, and the punishment is penal servitude for life, or for not less than three years or imprisonment with or without hard labour for not more than two years. In any other case the offence is a misdemeanour, and the punishment is imprisonment with or without hard labour for a year or a fine, or both (*s*).

Government contractor.

952. This provision applies to a person holding a contract with any department of the Government or with the holder of any office under the King as such holder, where such contract involves an obligation of secrecy, and to any person employed by any person holding such a contract who is under a like obligation of secrecy, as if the person holding the contract and the person so employed were holders of an office under the King (*t*).

Inciting others to commit offence.

953. Any person who incites another person to commit an offence under the Official Secrets Act, 1889 (*u*), is guilty of a misdemeanour, and on conviction is liable to the same punishment as if he had committed the offence (*a*).

Extent of Act.

The Official Secrets Act, 1889 (*b*), applies to all acts committed in any part of the King's dominions and to acts committed by British officers or subjects elsewhere (*b*).

SUB-SECT. 2.—*Extortion.*

What is extortion.

954. A public officer is guilty of extortion who, from an improper motive and under colour of office, takes from any person any money or valuable thing which is not due from such person at the time when it is taken (*c*).

Extortion is a common law misdemeanour, punishable by fine, or imprisonment without hard labour, and removal from office (*d*), and is triable at quarter sessions (*e*).

955. To constitute the offence of extortion there must be a guilty mind, *i.e.*, an intention to obtain some payment or advantage

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(*r*) Official Secrets Act, 1889 (52 & 53 Vict. c. 52), s. 2 (1).
(*s*) *Ibid.*, s. 2 (2); Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.
(*t*) Official Secrets Act, 1889 (52 & 53 Vict. c. 52), s. 2 (3).
(*u*) 52 & 53 Vict. c. 52.
(*a*) *Ibid.*, s. 3.
(*b*) *Ibid.* The consent of the Attorney-General to institution of proceedings is necessary (*ibid.*, s. 7). As to place of trial, see p. 278, *ante*. Such offences are not triable at quarter sessions (Official Secrets Act, 1889 (52 & 53 Vict. c. 52), s. 6 (3)).
(*c*) Co. Litt. 368 b; *Dive* v. *Maningham* (1550), 1 Plowd. 60, 68. As to extortion by threats to accuse of a crime, see p. 666, *post*.
(*d*) Bac. Abr. tit. Extortion.
(*e*) See *R.* v. *Loggen* (1718), 1 Stra. 74; Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1; Co. Litt. 368 b; 3 Co. Inst. 149; 1 Hawk. P. C., c. 27, s. 5.

SECT. 3. Offences by and in respect of Public Officers.

to which the offender knows he is not entitled. A mere mistake in demanding or receiving a fee does not constitute extortion (*f*).

An officer who takes a reward which is voluntarily given to him, and which it is customary to give for the more diligent or expeditious performance of his duty, is not guilty of extortion (*g*).

The fact that the defendant has handed over the amount extorted to his superior officer is no defence (*h*).

Sheriff etc.

956. Any sheriff or other officer of the King who takes any reward to do his office is to yield twice as much and to be punished at the King's pleasure (*i*).

957. Any sheriff, under-sheriff, bailiff or sheriff's officer, or any person employed in levying or collecting debts due to the Crown by process of any court, or any officer to whom the return or execution of writs belongs, is by statute (*k*) guilty of a misdemeanour, if he takes or demands any money or reward under any pretext whatever other than the fees allowed by law.

The punishment for this offence is a year's imprisonment and a fine (*l*).

Coroner.

958. A coroner is by statute (*m*) guilty of a misdemeanour if he acts extortionately or corruptly in his office, or if he wilfully neglects his duty or misbehaves in the discharge of his duty.

The punishment for this offence is imprisonment without hard labour and a fine (*m*). In addition to any other punishment such coroner may be adjudged by the court before which he is convicted to be removed from his office and to be disqualified from acting as coroner (*n*).

Clerks of assize etc.

959. Clerks of assize, clerks of the peace, clerks of the court, or their deputies or officers are by statute (*o*) guilty of a

(*f*) *Lee* v. *Dangar, Grant & Co.*, [1892] 2 Q. B. 337, C. A.; *Shoppee* v. *Nathan & Co.*, [1892] 1 Q. B. 245, 250; *Woolford's Estate* (*Trustee*) v. *Levy*, [1892] 1 Q. B. 772, C. A.

(*g*) Bac. Abr. tit. Extortion; 3 Co. Inst. 149. But it will, it is submitted, be otherwise if he is forbidden by statute to accept any sum in addition to his legal fees.

(*h*) *R.* v. *Higgins* (1830), 4 C. & P. 247. But it may be an indication as to whether or not there was an intention to extort more than the defendant knew was due.

(*i*) Statute of Westminster the First (3 Edw. 1), c. 26 (1275).

(*k*) Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 29 (2) (b).

(*l*) *Ibid.* He may also be punished as for contempt of court, and he is also liable to forfeit £200 to the person aggrieved and to pay all damages which he may have suffered (*ibid.*). The offence is triable at quarter sessions.

In the case of a county court registrar, bailiff, or officer charged with extortion or misconduct the county court judge may inquire into the matter in a summary way and make an order for repayment of the money extorted and such damages as he thinks just and also fine the officer a sum not exceeding £10; and any such officer who wilfully and corruptly exacts or accepts any fee or reward other than the fees which are duly allowed may be declared for ever incapable of being employed under the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 51. See title COUNTY COURTS, Vol. VIII., p. 424.

(*m*) Coroners Act, 1887 (50 & 51 Vict. c. 71), ss. 8, 17. See title CORONERS, Vol. VIII., p. 252. The offence is triable at quarter sessions.

(*n*) *Ibid.*, s. 8.

(*o*) Gaol Fees Abolition Act, 1815 (55 Geo. 3, c. 50), ss. 5, 9; Gaol Fees Abolition Act, 1845 (8 & 9 Vict. c. 114), s. 1.

misdemeanour, if they exact fees from prisoners who are acquitted or discharged.

The punishment for this offence is imprisonment without hard labour and fine (*p*).

SECT. 3. Offences by and in respect of Public Officers.

960. Gaolers who exact from a prisoner any fee or gratuity for entrance, commitment or discharge, or who detain him in custody for non-payment of any fee or gratuity, are punishable in the same way (*q*).

Gaolers.

SUB-SECT. 3.—*Oppression.*

961. Any public officer is guilty of oppression if while exercising, or under colour of exercising, his office he inflicts upon any person from an improper motive any illegal bodily harm, imprisonment, or any injury other than extortion (*r*). Oppression is a misdemeanour at common law (*s*).

Oppression.

The punishment for this offence is imprisonment without hard labour and a fine (*t*).

A public officer is not guilty of oppression if he acted in good faith, in the belief that he had the legal right to do the act in question, and without any intention to act corruptly or oppressively (*u*).

(*p*) These offences are triable at quarter sessions.

(*q*) Gaol Fees Abolition Act, 1815 (55 Geo. 3, c. 50), s. 13. As to extortion by gaolers and others from prisoners arrested on civil process and the summary redress to be given by the civil courts, see Debtors Imprisonment Act, 1758 (32 Geo. 2, c. 28), ss. 11, 12; and see *R.* v. *Colvin* (1724), 8 Mod. Rep. 226. Prison officers are forbidden to receive any money or gratuity from a prisoner or any visitor (Prison Act, 1865 (28 & 29 Vict. c. 126), s. 20, Sched. I., r. 66). Clerks and officers of the High Court are forbidden under heavy pecuniary penalties to demand or receive any gratuity or reward for doing or forbearing anything in relation to their office (Common Law Courts Act, 1852 (15 & 16 Vict. c. 73), s. 26), relating to officers of the common law courts, and Court of Chancery Act, 1852 (15 & 16 Vict. c. 87), s. 3, to officers of the Court of Chancery. The penalty and mode of recovery differ in each case, and it is not clear how these statutes could be applied in the case of officers of the High Court. Clerks to justices are liable to forfeit £20, if they demand or receive any greater fees than those to which they are entitled (Justices Clerks Fees Act, 1753 (26 Geo. 2, c. 14), s. 2). There are similar penalties in the case of a clerk of the peace (Clerks of the Peace (Fees) Act, 1817 (57 Geo. 3, c. 91), s. 2; Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 30). An officer or servant appointed or employed under the Public Health Act, 1875 (38 & 39 Vict. c. 55), who under colour of his office exacts or accepts any fee or reward other than his proper salary, wages, and allowances, is incapable of afterwards holding any office under that Act, and is liable to forfeit £50 to any person who may sue for it (*ibid.*, s. 193). The section does not apply to extra payment by a public authority to its officer for extra services (*Edwards* v. *Salmon* (1889), 23 Q. B. D. 531, C. A.). An action to recover the penalty cannot be commenced without the written consent of the Attorney-General (Public Health (Officers) Act, 1884 (47 & 48 Vict. c. 74), s. 2).

(*r*) Stephen, Digest of the Criminal Law, 88; Bac. Abr. tit. Offices and Officers, N.

(*s*) 4 Bl. Com. 140; *R.* v. *Okey* (1722), 8 Mod. Rep. 45; *R.* v. *Williams*, *R.* v. *Davis* (1762), 3 Burr. 1317.

(*t*) This offence is triable at quarter sessions (Dickinson's Quarter Sessions, 6th ed., 432).

(*u*) *R.* v. *Young* (1758), 1 Burr. 557; *R.* v. *Baylis* (1762), 3 Burr. 1318; *R.* v. *Jackson* (1787), 1 Term Rep. 653; *R.* v. *Borron* (1820), 3 B. & Ald. 432; *R.* v. *Badger* (1843), 4 Q. B. 468, 474.

SECT. 3. Offences by and in respect of Public Officers.

SUB-SECT. 4.—*Bribery of Public Officers.*

Bribery at elections.

962. Bribery at the election of members of Parliament is an indictable misdemeanour at common law punishable by fine and imprisonment (*x*), but this offence and those of personation, treating, undue influence, and similar corrupt and illegal practices at parliamentary elections are now usually punished under the provisions of various statutes which have been passed for that purpose (*y*).

Bribery at municipal elections is indictable at common law (*z*), and is also punishable by statute (*a*).

Bribery of judges etc.;

963. A judge, magistrate, or other judicial officer who accepts any bribe or reward offered in order to influence him in anything done in the conduct of his office is guilty of a misdemeanour at common law.

A person who offers or gives such a bribe or reward is guilty of a like misdemeanour.

The punishment for the offence is fine and imprisonment without hard labour, and if the offender is a judicial officer, loss of office (*b*).

of Privy Councillors etc.;

964. A person who attempts to procure an office by offering a bribe to a Privy Councillor or Minister of the Crown is guilty of a misdemeanour at common law (*c*).

of ministerial officers;

965. Every person is guilty of a misdemeanour at common law who bribes a ministerial officer or, being a ministerial officer, accepts a bribe, where the object of the bribe is to induce such officer to do, or to omit to do, any act which to his knowledge is in violation of his official duty (*d*).

of members etc. of public bodies.

966. Any person is by statute (*e*) guilty of a misdemeanour who by himself or in conjunction with any other person (1) corruptly solicits or receives or agrees to receive for himself or any other person any gift, loan, fee, reward or advantage as an inducement to any member or servant of a public body (*f*) doing or forbearing to do

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(*x*) *R.* v. *Pitt* (1762), 3 Burr. 1335, 1338, 1339. Even an attempt to bribe was so indictable (*R.* v. *Vaughan* (1769), 4 Burr. 2494, 2500); as to bribery of jurors, see p. 489, *post*.

(*y*) See title ELECTIONS.

(*z*) *R.* v. *Plympton* (1724), 2 Ld. Raym. 1377.

(*a*) See title ELECTIONS.

(*b*) Bac. Abr. tit. Offices and Officers, N.; 3 Co. Inst. 145, 147; 1 Hawk. P. C., c. 67. Bribery is not triable at quarter sessions except bribery under the Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict. c. 69), see note (*g*) on p. 485, *post*.

(*c*) *R.* v. *Vaughan* (1769), 4 Burr. 2494.

(*d*) Stephen, Digest of the Criminal Law, 96; Fifth Report of Criminal Law Commissioners 1840), p. 47; *R.* v. *Beale* (1798), cited 1 East, at p. 183. As to bribery of members of corporations and others, see *R.* v. *Tiverton* (*Mayor*) (1723), 8 Mod. Rep. 186; *R.* v. *Steward* (1831), 2 B. & Ad. 12; *R.* v. *Lancaster* (1890), 16 Cox, C. C. 737; as to bribery of police constables, see Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 16 (3); Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 14; County Police Act, 1839 (2 & 3 Vict. c. 93), s. 12; *Chisholm* v. *Holland* (1886), 50 J. P. 197.

(*e*) Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict. c. 69), s. 1.

(*f*) The expression "public body" means a county or borough council, also any board, commissioners, vestry or other body having power to act under any Act relating to local government or the public health, or the poor law, or

anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body is concerned; (2) corruptly gives, promises or offers to any person, whether for the benefit of that person or of another person, any gift etc. as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body doing or forbearing to do anything in respect of any matter in which the public body is concerned.

The punishment for this offence is imprisonment for not more than two years with or without hard labour, or a fine of £500, or both (*g*).

SUB-SECT. 5.—*Breach of Trust etc. by Public Officer.*

Breach of trust by public officer.

967. Any public officer is guilty of a common law misdemeanour (*h*) who commits a breach of trust, fraud, or imposition in a matter affecting the public, even although the same conduct, if in a private transaction, would, as between individuals, have only given rise to an action.

The punishment for this offence is fine and imprisonment without hard labour (*i*).

Refusing to serve in public office.

968. A duly qualified person who obstinately refuses to serve in a public office to which he has been appointed, if he has had due notice of the appointment, is guilty of a common law misdemeanour.

The punishment for this offence is fine and imprisonment without hard labour (*j*).

If such a person is out of the country, provided he has not left the country to avoid his appointment or the service, he is not guilty. But he is guilty, even if he has paid an alternative fine, except when the fine is lawfully paid in lieu of service (*k*).

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otherwise to administer money raised by rates under a public Act, but not any public body as so defined existing elsewhere than in the United Kingdom (*ibid.*, s. 7).

(*g*) Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict. c. 69), s. 2. This offence is triable at quarter sessions, see *ibid.*, s. 6. In addition the offender may be ordered to pay to the public body the amount or value of the gift or reward, and may be adjudged to be incapable of holding any public office for seven years and to forfeit any such office held by him at the time of his conviction. Upon a second conviction for a like offence he may, in addition to the foregoing penalties, be adjudged to be for ever incapable of holding any public office and to be incapable for seven years of being registered as an elector or voting at an election of a member to serve in parliament or of a member of any public body. If the person convicted is an officer or servant in the employ of any public body, the court before which he is convicted may order him to forfeit his claim to any compensation or pension to which he would otherwise have been entitled (*ibid.*). In the Prevention of Corruption Act, 1906 (6 Edw. 7, c. 34), which is directed against corrupt transactions with "agents," the word "agent" includes a person serving under the Crown or under any corporation or any municipal, borough, county, or district council, or any board of guardians.

(*h*) *R.* v. *Bembridge* (1783), 3 Doug. (K. B.) 327, 332; and *R.* v. *Leheup* (1755), *ibid.*, p. 332, n.; *R.* v. *Jones* (1809), 31 State Tr. 251; *R.* v. *Baxter* (1851), 5 Cox, C. C. 302, 312 (where a form of an indictment is given); *R.* v. *Martin* (1809), 2 Camp. 268; *R.* v. *Dale* (1852), Dears. C. C. 37. As to larcenies etc. by public officers, see pp. 644, 654, *post*.

(*i*) This offence is triable at quarter sessions.

(*j*) This offence is triable at quarter sessions.

(*k*) 2 Chitty, Criminal Law, 266; *R.* v. *Dennison* (1758), 2 Keny. 259; *R.* v.

SECT. 3. Offences by and in respect of Public Officers.

969. If a public officer neglects to perform a duty imposed on him either by common law or statute, he is guilty of a common law misdemeanour (*l*).

The punishment for the offence is fine and imprisonment and loss of office (*m*).

Neglect by public officer.

SUB-SECT. 6.—*Sale of Offices.*

Sale of public office.

970. Every person is by statute (*n*) guilty of a misdemeanour who sells, purchases, or bargains for any office, commission, place or employment in the gift of the Crown or appointed by the Crown, or any participation in the profits thereof, or the resignation thereof; or who receives or pays, or contracts to receive or pay, any reward or profit for any interest, solicitation, or recommendation concerning the appointment to, or resignation of, any such office, place, or employment, or who keeps any office for negotiating any business relating to vacancies in offices in any public department (*o*).

The punishment for this and for the last-mentioned offence is fine and imprisonment without hard labour (*p*).

Sale of commission in the army etc.

971. Every person is by statute (*q*) guilty of a misdemeanour who negotiates or otherwise aids or connives at (1) the sale or purchase of any commission in the King's regular forces; or (2) the giving or receiving of any valuable consideration in respect of any promotion in or retirement from such forces or any employment therein; or (3) any exchange made in manner not authorised under the Regimental Exchanges Act, 1875 (*r*), and in respect of which any consideration is given.

The punishment for such offence on conviction on indictment or

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Woodrow (1788), 2 Term Rep. 731; *R.* v. *Burder* (1792), 4 Term Rep. 778; *R.* v. *Bower* (1823), 1 B. & C. 585. As to persons entitled to immunity from service in a parochial office, see Archbold's Criminal Pleading, 23rd ed., 1251.

(*l*) Stephen, Digest of the Criminal Law, 90; *R.* v. *Wyat* (1705), 1 Salk. 380. The law requires that, whether a man seeks a public office or is compelled to accept it, he should do his best in that office and that he must act in it with ordinary firmness, judgment, and discretion. A public officer who does not so act is guilty of a common law misdemeanour, however honest and honourable his intentions may have been (*R.* v. *Pinney* (1832), 3 State Tr. (N. S.) 11, 510; *R.* v. *Eyre* (1868), (Finlason's Report, 1868), 55, 58).

(*m*) 1 Hawk. P. C., c. 27, s. 1; 4 Bl. Com. 140. The offence is triable at quarter sessions.

(*n*) Sale of Offices Act, 1809 (49 Geo. 3, c. 126), s. 3. Various offices are specified in this Act and in the Sale of Offices Act, 1551 (5 & 6 Edw. 6, c. 16), to the offices mentioned in which the Sale of Offices Act, 1809 (49 Geo. 3, c. 126), extends. As to the construction of these statutes, see *Hopkins* v. *Prescott* (1847), 4 C. B. 578; *Graeme* v. *Wroughton* (1855), 11 Exch. 146; *Sterry* v. *Clifton* (1850), 9 C. B. 110; *Samo* v. *R.* (1847), 2 Cox, C. C. 178. It is unlawful for anyone to "buy, sell, let or take to ferm" the office of under-sheriff, bailiff, or any other office appertaining to the office of sheriff (see Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 27).

(*o*) Sale of Offices Act, 1809 (49 Geo. 3, c. 126), ss. 4, 5. This is also a misdemeanour at common law (see *R.* v. *Vaughan* (1769), 4 Burr. 2494, 2501; *R.* v. *Pollman* (1809), 2 Camp. 229).

(*p*) These offences are triable at quarter sessions.

(*q*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 155. The Act excepts the Army Purchase Commissioners (appointed under the Regulation of the Forces Act, 1871 (34 & 35 Vict. c. 86), s. 10) and persons acting under their authority.

(*r*) 38 & 39 Vict. c. 16.

information is a fine of £100, or imprisonment without hard labour for six months (*s*).

SECT. 3. Offences by and in respect of Public Officers.

SUB-SECT. 7.—*Offences by Particular Officers.*

972. A person who has been appointed to the office of parish constable is bound to serve, if he is resident within the parish; if he merely carries on business within the parish, but he has no dwelling or sleeping-place there, he is not bound to serve (*t*).

Sheriff.

973. It is the duty of a sheriff to cause a prisoner sentenced to death to be executed, and if a sheriff in whose custody the convict is neglects that duty, he is guilty of a misdemeanour at common law (*u*).

Any sheriff or his under-sheriff or officer is by statute (*a*) guilty of a misdemeanour who conceals or refuses to arrest any felon, or releases a prisoner who is not bailable, or is guilty of any offence against, or breach of the provisions of, the Sheriffs Act, 1887 (*b*). The punishment for this offence is imprisonment without hard labour for a year and a fine, or, if the offender is unable to pay the fine, imprisonment without hard labour for not more than three years (*c*).

Overseer etc.

974. An overseer of the poor who does not provide for a pauper whom he is bound to relieve is guilty of a common law misdemeanour (*d*); a relieving officer who does not supply medical assistance to a pauper who needs it and applies for it is also guilty of a similar misdemeanour (*e*); so is a gaoler who ill-treats a prisoner or allows a prisoner to escape (*f*).

(*s*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 155. If the offender is an officer, he may also be dismissed by court-martial from the service (*ibid.*). The offence is triable at quarter sessions.

(*t*) *R.* v. *Adlard* (1825), 4 B. & C. 772. It is submitted that the same rule applies in the case of every office the duties of which require to be performed in person (see *Donne* v. *Martyr* (1828), 8 B. & C. 62). As to the method of appointment of a parish constable in cases where they may still be appointed, and as to his obligation to serve unless he can find a substitute, see the Parish Constables Act, 1872 (35 & 36 Vict. c. 92), ss. 2, 3. Special constables who refuse to serve when duly appointed by two or more justices are liable on summary conviction to a fine of £5 (Special Constables Act, 1831 (1 & 2 Will. 4, c. 41), s. 8). As to special constables in boroughs, see Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 194, 196.

(*u*) *R.* v. *Antrobus* (1835), 2 Ad. & El. 788, 798. The offence is triable at quarter sessions.

(*a*) Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 29; and see title SHERIFFS AND BAILIFFS.

(*b*) *Ibid.*

(*c*) Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 29; he may also be punished summarily by the High Court and certain other courts (see sub-s. 3). Proceedings by indictment or to recover penalties must be commenced within two years (sub-s. 7), and a summary proceeding before the end of the next sittings of the court. These offences are triable at quarter sessions.

(*d*) *R.* v. *Meredith* (1803), Russ. & Ry. 46; see also *R.* v. *Davis* (1754), Say. 163. Pecuniary penalties are provided for the refusal or neglect by an overseer of the poor to make out and deliver proper lists of parliamentary voters, and he cannot be indicted for such refusal or neglect (Parliamentary Voters Registration Act, 1843 (6 & 7 Vict. c. 18), s. 51; *R.* v. *Hall*, [1891] 1 Q. B. 747). See title ELECTIONS.

(*e*) *R.* v. *Curtis* (1885), 15 Cox, C. C. 746.

(*f*) 1 Hawk. P. C., c. 27, s. 2. These offences may be tried at quarter sessions. As to neglect of duty by a coroner, see p. 482, *ante*, and title CORONERS, Vol. VIII., p. 251.

SECT. 3. Offences by and in respect of Public Officers.

Offences by officers in the army.

975. A soldier is amenable to the criminal law to the same extent as any other subject, and is punishable by the ordinary courts having a criminal jurisdiction (*g*).

Any officer is by statute (*h*) guilty of a misdemeanour who (1) neglects or refuses on application to deliver over to the civil magistrate any officer or soldier under his command who is accused or convicted of any offence, or (2) wilfully obstructs or neglects or refuses to assist constables or other ministers of justice in apprehending any such officer or soldier.

A soldier in a subordinate position is not, it would seem, criminally responsible for the consequences of obeying the orders of his superior officer whose orders he is bound to obey, provided those orders are not, having regard to the occasion upon which they are given and executed, manifestly illegal (*i*).

Any officer is by statute (*k*) guilty of a misdemeanour who quarters or causes to be billeted any soldier or horse otherwise than as the Army Act, 1881, allows (*l*).

The punishment for this and for the last-mentioned offence is fine and imprisonment without hard labour (*m*).

Offences by Post Office servants etc.

976. Any person employed under the Post Office is by statute (*n*) guilty of a misdemeanour who contrary to his duty opens, or procures or suffers to be opened, or who wilfully detains or delays or procures or suffers to be detained or delayed, any postal packet in course of transmission by post, or who discloses or intercepts the contents of a telegram.

The punishment for such offence is imprisonment with or without hard labour or a fine, or both imprisonment and fine (*o*).

Any person who has official duties connected with the Post Office, or who is acting on behalf of the Postmaster-General, is by statute (*p*) guilty of a misdemeanour, if contrary to his duty he discloses or in any way makes known or intercepts the contents or any part of the

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(*g*) Army Act, 1881 (44 & 45 Vict. c. 58), ss. 41 (b), 144 (1), (2). As to courts-martial, see title COURTS, p. 102, *ante*; and as to "martial law," see p. 104, *ante*, and *Tilonko* v. *A.-G. of Natal*, [1907] A. C. 93, P. C.

(*h*) *Ibid.*, s. 162 (3).

(*i*) 1 Stephen, History of the Criminal Law, 204; *R.* v. *Trainer* (1864), 4 F. & F. 105, 111; *R.* v. *Hutchinson* (1864), 9 Cox, C. C. 555; *Keighly* v. *Bell* (1866), 4 F. & F. 763.

(*k*) Army Act, 1881 (44 & 45 Vict. c. 58), s. 111. Several minor offences connected with billeting are made punishable by the Act by fine upon summary conviction (see *ibid.*, ss. 109 and 110).

(*l*) 44 & 45 Vict. c. 58.

(*m*) These offences are triable at quarter sessions.

(*n*) Post Office Act, 1908 (8 Edw. 7, c. 48), s. 56. This does not extend to opening or delaying a postal packet returned for want of a true direction or because the addressee is dead or cannot be found or refuses to receive it, or to the opening or detaining of a postal packet under the authority of the Act or in obedience to an express warrant of a Secretary of State (*ibid.*). The expression "postal packet" includes every packet or article transmissible by post, and also a telegram (*ibid.*, s. 89). This offence is triable at quarter sessions. As to the punishment on summary conviction of Post Office officials for negligence, drunkenness or other misconduct, see s. 57.

(*o*) *Ibid.* As to stealing or embezzling by Post Office servants see pp. 644, 654, *post*.

(*p*) Telegraph Act, 1868 (31 & 32 Vict. c. 110), s. 20.

contents of a telegraphic message intrusted to the Postmaster-General for the purpose of transmission.

The punishment for this offence is imprisonment without hard labour for not more than twelve calendar months (*q*).

SECT. 3. Offences by and in respect of Public Officers.

977. Any commissioner or collector or officer or person employed in relation to the Inland Revenue is by statute (*r*) guilty of a misdemeanour who asks for or receives any sum of money or recompense or any promise thereof, or enters into any collusive agreement to do, abstain from, conceal, or connive at any act whereby the King may be defrauded.

Offences by revenue officers etc.

The punishment for this offence is a fine of £500; and on conviction the offender becomes incapable of ever holding any office under the Crown (*s*).

978. Any collector of Inland Revenue is by statute guilty of a misdemeanour (*t*) who neglects to keep and render the prescribed accounts of sums received by him.

Any collector or any person appointed to be an officer and employed in relation to duties of excise is by statute (*a*) guilty of a misdemeanour, if he trades in any goods subject to any such duty or is concerned in any business subject to any law of excise.

SECT. 4.—*Offences relating to the Administration of Justice* (*b*).

SUB-SECT. 1.—*Embracery.*

Embracery.

979. Anyone is at common law guilty of the misdemeanour of embracery who attempts to corrupt, influence, or instruct a jury or to incline them to favour one side more than the other, whether by money, promises, letters, threats, or persuasion, or by any other means than by evidence and arguments in open court at the trial.

To give jurors money after their verdict is an act of embracery, though there was no previous promise to pay it.

The offence may be committed as well by one of the jury as by a party to the cause or any person acting on his behalf (*c*).

Every person is at common law guilty of a misdemeanour who by improper means procures himself or others to be sworn upon a jury for the purpose of giving a verdict favourable to one of the parties (*d*) or induces a juror not to appear (*e*).

(*q*) Telegraph Act, 1868 (31 & 32 Vict. c. 110), s. 20. This offence is triable at quarter sessions.

(*r*) Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 10.

(*s*) *Ibid.*

(*t*) *Ibid.*, s. 14 (2). On conviction the offender becomes disqualified from holding any office under the Crown. He would also, it seems, be liable to fine and imprisonment.

(*a*) *Ibid.*, s. 7. The punishment, it seems, is imprisonment, and the offender forfeits his office and becomes incapable of ever holding any office relating to the excise (*ibid.*). *Quære*, whether this and the two last-mentioned offences are triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*b*) As to corruption of judges, see p. 484, *ante*.

(*c*) 1 Hawk. P. C., c. 27, ss. 1—4. See stat. (1540) 32 Hen. 8, c. 9, s. 3, and the Juries Act, 1825 (6 Geo. 4, c. 50), s. 61.

(*d*) 1 Hawk. P. C., c. 27, s. 4; *R.* v. *Opie* (1670), 1 Saund. 301; *Hussey* v. *Cook* (1620), Hob. 294.

(*e*) 1 Hawk. P. C., c. 27, s. 6; *Hussey* v. *Cook*, *supra*.

SECT. 4. Offences relating to the Administration of Justice.

The punishment for this and for the last-mentioned offence is fine and imprisonment without hard labour (*f*).

SUB-SECT. 2.—*Perjury.*

Perjury.

980. A person is guilty of the common law misdemeanour of perjury (*g*) who in the course of a judicial proceeding before an authority of competent jurisdiction makes upon oath or affirmation a statement which is material to the matter in question in such proceeding and is false to the knowledge of the person making it or is not known or believed by him to be true (*h*).

The punishment by statute for wilful and corrupt perjury is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*i*).

Children of tender years are under certain circumstances allowed to give evidence without being sworn, but in such a case they are liable to be punished for perjury on summary conviction, if they give false evidence (*k*).

Judicial proceedings.

981. The oath must have been taken in a judicial proceeding or inquiry, but not necessarily in a then pending litigation, if it is taken in the usual course with a view to and for the purposes of litigation (*a*).

Jurisdiction.

982. The making of a false statement on oath etc. does not amount to perjury unless the oath etc. is taken before an authority having competent jurisdiction, *i.e.*, before a person having legal authority to administer it, and in a court having jurisdiction over the matter which is in question in the proceedings in which the oath or affirmation is taken (*b*).

(*f*) These offences are, it seems, triable at quarter sessions.

(*g*) As to other false oaths and declarations, see p. 497, *post.*

(*h*) 1 Hawk. P. C., c. 27, s. 1; Stephen, Digest of the Criminal Law, 106; *R.* v. *Aylett* (1785), 1 Term Rep. 63, 69. As to oaths and affirmations, see title EVIDENCE.

(*i*) Perjury Act, 1728 (2 Geo. 2, c. 25), s. 2; Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), s. 2; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. See *R.* v. *Castro* (1880), 5 Q. B. D. 490; *Castro* v. *R.* (1881), 6 App. Cas. 229. Perjury is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1; *R.* v. *Haynes* (1825), Ry. & M. 298). The common law punishment was fine and imprisonment (3 Co. Inst. 164).

(*k*) See Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 15; Children Act, 1908 (8 Edw. 7, c. 67), s. 30; and p. 408, *ante.*

(*a*) *King* v. *R.* (1849), 14 Q. B. 31, Ex. Ch.; see also *R.* v. *White* (1829), 1 Mood. & M. 271; *R.* v. *Mudie* (1831), 1 Mood. & R. 128; *Clendinning* v. *O'Malley* (1842), 1 Con. & Law. 363 (Ir.); *R.* v. *Tomlinson* (1866), L. R. 1 C. C. R. 49; *R.* v. *Proud* (1867), L. R. 1 C. C. R. 71. Proceedings in an arbitration before a county court judge under the Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), are judicial proceedings, and a witness may be indicted for perjury in respect of false evidence given therein (*R.* v. *Crossley*, [1909] 1 K. B. 411, C. C. A.).

(*b*) 3 Co. Inst. 166; 1 Hawk. P. C., c. 69, ss. 3, 4. In the following instances it has been held that a false oath amounted to perjury:—*R.* v. *Hughes* (1844), 1 Car. & Kir. 519 (evidence before a grand jury); *R.* v. *Heane* (1864), 4 B. & S. 947 (evidence before a naval court-martial, as to which see now Naval Discipline Act (29 & 30 Vict. c. 109), s. 67, and as to army courts-martial, Army Act, 1881 (44 & 45 Vict. c. 58), s. 126 (2)); *R.* v. *Millard* (1853), Dears. C. C. 166 (evidence on hearing of summons for malicious trespass, the information not having been given on oath); *R.* v. *Fletcher* (1871), L. R. 1 C. C. R. 320; *R.* v. *Chugg* (1870), 11 Cox, C. C. 558; *R.* v. *Berry* (1859), Bell, C. C. 46; *R.* v.

Commissioners for oaths may administer oaths or take affidavits for the purposes of any court or matter in England, including matters relating to the registration of any instrument, whether under Act of Parliament or otherwise (*c*), and false oaths taken before them are punishable as perjury (*d*).

If a false affidavit is sworn abroad before a person authorised by English law to administer an oath (*e*), and is used in England, the deponent is guilty of perjury (*f*). If a false affidavit is sworn abroad before a person not so authorised (*g*), the deponent is not guilty of perjury, but is guilty of a misdemeanour, if he uses such a false document in order to pervert the course of justice (*h*).

False affidavits.

A person who makes a false promissory oath is not guilty of perjury (*i*), nor is a juror punishable who gives a verdict contrary to his oath and the manifest evidence (*k*).

Promissory oath.

983. To support a charge of perjury it is necessary that the evidence alleged to be false should have been material to the issue or matter then under the consideration of the court (*l*). Evidence

False statement must be material.

Simmons (1859), Bell, C. C. 168 (evidence of defendant on irregular or defective bastardy proceedings in which he had appeared without objecting to irregularity). In the following cases it was held that a false oath did not amount to perjury, not having been taken before an authority with competent jurisdiction:—*R.* v. *Ewington* (1841), 2 Mood. C. C. 223 (evidence given in bankruptcy proceedings, there having been no good petitioning creditor's debt to support the fiat); *R.* v. *Scotton* (1844), 5 Q. B. 493 (evidence given on the hearing of a summons under the Game Act, 1831 (1 & 2 Will. 4, c. 32), there having been no information on oath which was then a condition precedent to the issuing of a summons; the authority of *R.* v. *Scotton* was, however, doubted in *R.* v. *Hughes* (1879), 4 Q. B. D. 614, 628, 630, C. C. R., in which it was held that if a person is rightly or wrongly brought in person before justices and a charge of an offence committed within their jurisdiction is then made against him, they are acting within their jurisdiction, and perjury may be assigned upon false evidence given in the course of such proceedings); *R.* v. *Bacon* (1870), 11 Cox, C. C. 540 (evidence given on a charge under s. 78 of the Highway Act, 1835 (5 & 6 Will. 4, c. 50), of furious riding, the justices having under that Act only power to fine for furious driving; see now, however, *Williams* v. *Evans* (1876), 1 Ex. D. 277); *R.* v. *Clegg* (1868), 19 L. T. 47 (evidence given by the defendant on the hearing of a summons against himself for permitting gambling, the defendant not being then a competent witness on his own behalf and falsely pretending that he was his own son; see now Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1); *R.* v. *Lloyd* (1887), 19 Q. B. D. 213, C. C. R. (where the defendant had been sworn before the registrar as a witness in an examination in bankruptcy, but the registrar was not present in the room at the time when the alleged false evidence was given); *R.* v. *Cohen* (1816), 1 Stark. 511 (evidence given at the trial of an action brought by two plaintiffs one of whom died before the trial, whereby the action had abated, the proper suggestion not having been made on the record). And see title OATHS AND AFFIRMATIONS.

(*c*) Commissioners for Oaths Act, 1889 (52 Vict. c. 10), s. 1.

(*d*) *Ibid.*, s. 7.

(*e*) As to who are such persons, see Commissioners for Oaths Act, 1889 (52 Vict. c. 10), s. 6, and R. S. C., Ord. 38, r. 6.

(*f*) Commissioners for Oaths Act, 1889 (52 Vict. c. 10), s. 7; and see p. 494, *post*.

(*g*) *Musgrave* v. *Medex* (1816), 19 Ves. 652.

(*h*) *Omealy* v. *Newell* (1807), 8 East, 364, 372.

(*i*) 1 Hawk. P. C., c. 27, s. 3; *e.g.*, oaths required by law upon taking certain offices that the deponent will faithfully perform the duties of the office.

(*k*) *Bushell's Case* (1670), 6 State Tr. 999.

(*l*) 3 Co. Inst. 167; 1 Hawk. P. C., c. 27, s. 8. Whether or not the evidence alleged to be untrue was material is probably a question for the judge, and not for the jury (*R.* v. *Courtney* (1856), 7 Cox, C. C. 111, C. C. R. (Ir.); *R.* v. *Gibbon*

SECT. 4. Offences relating to the Administration of Justice.

is material if it is of such a nature as in any way to affect directly or indirectly the probability of anything to be determined by the proceeding (*m*). Evidence in any way affecting the credit or credibility of the deponent or of any other witness is material (*n*). Evidence may be material, although it was legally inadmissible and wrongly admitted (*o*).

If the false evidence was as to a matter which was only collateral to the issue, and which did not affect the credit of the deponent or another witness, it is not material, and will not support an indictment for perjury (*p*).

Must be statement of fact.

984. The statement on oath must have been a statement of a fact and not a mere opinion (*q*). But whether or not the defendant held the opinion which he swore he did hold, is a question of fact upon which an indictment may be founded (*r*).

If a man wilfully and corruptly swears to a particular fact without knowing at the time whether this fact is true or false, he is guilty of perjury (*s*).

A false statement does not amount to perjury, unless it was made intentionally with some degree of deliberation, and without inadvertence (*t*).

(1861), Le. & Ca. 109, 114; *R.* v. *Worley* (1849), 3 Cox, C. C. 535; *R.* v. *Southwood* (1858), 1 F. & F. 356; *R.* v. *Dunston* (1824), Ry. & M. 109); but there is some authority to the contrary (see *R.* v. *Goddard* (1861), 2 F. & F. 361; *R.* v. *Lavey* (1850), 3 Car. & Kir. 26).

(*m*) 1 Hawk. P. C., c. 69, s. 8; Stephen, Digest of the Criminal Law, 107; *R.* v. *Tyson* (1867), L. R. 1 C. C. R. 107.

(*n*) *R.* v. *Gibbon* (1862), Le. & Ca. 109; *R.* v. *Baker*, [1895] 1 Q. B. 797, C. C. R. (all the earlier authorities were referred to in these cases).

(*o*) *R.* v. *Phillpotts* (1851), 2 Den. 302; *R.* v. *Gibbon, supra.*

(*p*) 3 Co. Inst. 167; 1 Hawk. P. C., c. 27, s. 8; *R.* v. *Griepe* (1697), 12 Mod. Rep. 139, 142; *R.* v. *Murray* (1858), 1 F. & F. 80; *R.* v. *Holden* (1872), 12 Cox, C. C. 166. In the last-mentioned case the defendant was indicted for perjury committed before justices upon a charge by him against the prosecutor of using language calculated to incite to the commission of a breach of the peace. This language was alleged to have been used in consequence of the cruelty of the defendant to a horse, and the assignment of perjury was upon the defendant's oath that he had committed no act of cruelty to the horse; MELLOR, J., after consultation with LUSH, J., held that the defendant's words were merely collateral to the issue before the justices, and he directed an acquittal. In *R.* v. *Dunston* (1824), Ry. & M. 109, it was held by ABBOTT, C.J., that the defendant could not be indicted for perjury in his sworn answer in a Chancery suit for specific performance in which he set up the Statute of Frauds as a defence, and also denied the existence of any verbal agreement to the effect alleged in the bill, this allegation being immaterial and irrelevant; see also *R.* v. *Benesech* (1796), Peake, Add. Cas. 93, and compare *R.* v. *Yates* (1841), Car. & M. 132.

(*q*) *R.* v. *Crespigny* (1795), 1 Esp. 280.

(*r*) *Miller's Case* (1773), 2 W. Bl. 881, 886; *R.* v. *Pedley* (1784), 1 Leach, 325; 1 Hawk. P. C., c. 27, s. 7, n.; *R.* v. *Schlesinger* (1847), 10 Q. B. 670.

(*s*) *R.* v. *Mawbey* (*Bart.*) (1796), 6 Term Rep. 619, 637; and this appears to be the case even though the fact alleged be true, if the defendant did not know or believe it to be true (3 Co. Inst. 166; 1 Hawk. P. C., c. 27, s. 6; *Allen* v. *Westley* (1628), Het. 97. See *R.* v. *Petricus* (1903), 67 J. P. 378).

(*t*) 1 Hawk. P. C., c. 27, s. 2; see *R.* v. *London* (1871), 12 Cox, C. C. 50, C. C. R. If the indictment is for perjury in an affidavit which the defendant signed as a marksman, it must be proved that it was read over to him before he swore it, unless the jurat states that it was so read over, in which case credit is, in the absence of evidence to the contrary, given to the statement in the jurat (*R.* v.

Indictment.

985. Two or more persons cannot be joined in one indictment for perjury, the offence being in its nature several (*u*).

An indictment may contain several assignments (*a*) alleging different acts of perjury, and a conviction upon any one assignment will be good (*b*).

In an indictment for perjury or for taking a false oath or declaration it is sufficient to set forth the substance of the offence charged upon the defendant, and by what court or before whom the oath or declaration etc. was taken, without setting forth the pleading, indictment, or any part of any proceeding, or the commision or authority of the court or person before whom such offence was committed (*c*).

An indictment for perjury must, however, show that the false oath was taken in a judicial proceeding and before a court of competent jurisdiction (*d*), but it need not allege in detail facts showing that the court had jurisdiction over the matter in question.

Hailey (1824), 1 C. & P. 258; and see *R.* v. *Petricus*, *supra*). If the alleged false statement was in a foreign language, it is sufficient to set forth an English translation in the indictment, alleging that the defendant swore "in substance and to the effect following, that is to say" (*R.* v. *Thomas* (1848), 2 Car. & Kir. 806). The fact that owing to an informality in the jurat or other technicality the affidavit could not have been used will not prevent an indictment being founded upon it (*R.* v. *Hailey*, *supra*; *Bill* v. *Bament* (1841), 8 M. & W. 317, *per* ALDERSON, B.; *R.* v. *Christian* (1842), Car. & M. 388, 393). The offence is complete upon the false oath being taken, and the fact that no use was made of the affidavit and no proceeding founded upon it is immaterial (*R.* v. *Crossley* (1797), 7 Term Rep. 315); so also is the fact that the false evidence was rejected as inadmissible or withdrawn (*R.* v. *Phillpotts* (1851), 2 Den. 302). In *R.* v. *Carr* (1669), 1 Sid. 418, it was held by the court upon a trial at bar that upon an indictment for perjury in an answer in Chancery to which exceptions were taken, whereupon a second answer was put in giving explanations, nothing could be assigned as perjury which was explained in the second answer, because the second answer made that which was at first a perjury no perjury. See the observations of Lord ELDON, L.C., on this case in *Edwards* v. *M'Leay* (1813), 2 Ves. & B. at p. 258. In *R.* v. *Jones* (1791), Peake, 37, Lord KENYON, C.J., held that in the case of an assignment of perjury upon oral evidence the whole of the defendant's evidence should be proved, for if in one part of his evidence he corrected any mistake he had made in another part of it, it would not be perjury; but in *R.* v. *Dowlin* (1793), Peake, 170, the same judge held that if the alleged false statement was an isolated answer, given in cross-examination, and entirely unconnected with the original examination, the latter need not be proved. See also *R.* v. *Rowley* (1825), Ry. & M. 299; *R.* v. *Munton* (1829), 3 C. & P. 498.

(*u*) *R.* v. *Philips* (1731), 2 Stra. 921; but it is otherwise in indictments for subornation of perjury (*R.* v. *Rhodes* (1703), 2 Ld. Raym. 886), and probably an indictment one count of which charges one defendant with perjury and another charges another defendant with subornation is good (1 Russell on Crimes, 332, n. See for such an indictment *R.* v. *Goodfellow* (1842), Car. & M. 569). The indictment may charge different acts of perjury in separate counts (*Castro* v. *R.* (1881), 6 App. Cas. 229).

(*a*) The assignment of perjury in an indictment is the formal statement of the alleged false evidence.

(*b*) *R.* v. *Rhodes*, *supra*.

(*c*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100) s. 20.

(*d*) *R.* v. *Pearson* (1837), 8 C. & P. 119; *R.* v. *Overton* (1843), 4 Q. B. 83; *R.* v. *Bishop* (1842), Car. & M. 302. Where an indictment for perjury stated that the false oath had been taken at quarter sessions upon the trial of "a certain indictment for misdemeanour" against two persons, it was held that the indictment for perjury was good, although it did not state what the misdemeanour

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If the alleged perjury is in an affidavit or statutory declaration made before a commissioner to administer oaths, it is not sufficient to allege generally his authority to take an oath; the circumstances under which the oath was taken should be set out in the indictment in order that the court may judge of the authority (*e*).

The indictment must show, either by an express averment or by a statement of the proceedings or facts of the case, that the question to which the false statement related was material (*f*).

The indictment must show either explicitly or otherwise what the material question was to which the alleged false statement related (*g*).

The indictment will be bad, unless it alleges that the defendant swore "falsely." The words "corruptly," "knowingly," or "maliciously" are insufficient to supply the defect (*h*).

Although in an indictment for the common law offence it is not necessary to allege that the defendant swore "wilfully" (*i*), an indictment for perjury, in order to satisfy the Perjury Act, 1728 (*k*), must state that the defendant swore "wilfully and corruptly" (*l*).

Evidence.

986. To prove each assignment of perjury there must either be (1) the evidence of two witnesses confirming each other in substantial matters, and disproving the defendant's statement alleged to be false (*m*); or (2) the evidence of one witness confirmed by other independent and corroborative circumstances (*n*); or (3) evidence that the defendant has himself made a contradictory statement on oath or in writing, and also that such contradictory statement was true and that the statement alleged in the assignment was false (*o*).

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was or that the court of quarter sessions had jurisdiction to try it (*R.* v. *Dunning* (1871), L. R. 1 C. C. R. 290; see also *R.* v. *Dowlin* (1793), 5 Term Rep. 311, 320; *R.* v. *Callanan* (1826), 6 B. & C. 102; *Lavey* v. *R.* (1851), 17 Q. B. 496, Ex. Ch.).

(*e*) *R.* v. *McDonald* (1905), 21 Cox, C. C. 70, *per* DARLING, J.; and see *R.* v. *Nott* (1843), 4 Q. B. 768.

(*f*) *R.* v. *Dowlin* (1793), 5 Term Rep. 311, 318; *R.* v. *Nicholl* (1830), 1 B. & Ad. 21, 24; *R.* v. *Cutts* (1850), 4 Cox, C. C. 435; if it does not do so, the defect cannot be cured by amendment (*R.* v. *Harvey* (1858), 8 Cox, C. C. 99).

(*g*) An averment "that it became and was material to ascertain the truth of the matter hereinafter alleged to have been sworn to and stated by the said J. G. upon his oath" is not a good averment of materiality (*R.* v. *Goodfellow* (1842), Car. & M. 569).

(*h*) *R.* v. *Oxley* (1852), 3 Car. & Kir. 317; *R.* v. *Harris* (1822), 5 B. & Ald. 926.

(*i*) *R.* v. *Cox* (1770), 1 Leach, 71.

(*k*) 2 Geo. 2, c. 25, s. 2.

(*l*) *R.* v. *Stevens* (1826), 5 B. & C. 246. With regard to the form of oath it is sufficient to allege that the defendant was in due manner sworn without stating the form of oath (*R.* v. *M'Carther* (1792), Peake, 155, *per* Lord KENYON, C.J.). The various assignments of perjury must be negatived by averments as in an indictment for obtaining property by false pretences (*R.* v. *Perrott* (1814), 2 M. & S. 379, 385). As to venue, see pp. 280, n., 284, n., *ante*.

(*m*) *R.* v. *Yates* (1841), Car. & M. 132; *R.* v. *Parker* (1842), Car. & M. 639.

(*n*) *R.* v. *Boulter* (1851), 3 Car. & Kir. 236; *R.* v. *Braithwaite* (1859), 8 Cox, C. C. 254; *R.* v. *Webster* (1859), 1 F. & F. 515, where even a memorandum made by the witness at the time was held by COCKBURN, C.J., to be sufficient corroboration, *sed quære;* see 1 Russell on Crimes, 371, n.

(*o*) In *R.* v. *Knill* (1822), 5 B. & Ald. 929, n. (see also 939, n.), it was held that evidence that the defendant had upon another occasion made a contradictory

The averment in the indictment of the words alleged to have been spoken must be strictly proved (*p*).

Evidence must also be given that the oath was taken in a judicial proceeding and before a court or person of competent jurisdiction, and for this purpose the record of the proceedings must be proved (*q*).

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statement on oath was sufficient without further evidence showing which of his two statements was false; but it is submitted that this is not law (see *R.* v. *Hook* (1858), Dears. & B. 606, where it was said by POLLOCK, C.B., at p. 614, that probably no judge would now direct a conviction upon such evidence as was deemed sufficient in *R.* v. *Knill* without confirmatory circumstances; *R.* v. *Wheatland* (1838), 8 C. & P. 238; *R.* v. *Jackson* (1823), 1 Lew. C. C. 270; *R.* v. *Hughes* (1844), 1 Car. & Kir. 519). Where one witness proves the falsity of the defendant's statement which is the subject of the indictment, contradictory written statements by the defendant, though not made upon oath, have been held to be a sufficient corroboration (*R.* v. *Mayhew* (1834), 6 C. & P. 315). It is not necessary to prove by two witnesses every fact which goes to make out an assignment of perjury (*R.* v. *Roberts* (1848), 2 Car. & Kir. 607; *R.* v. *Hare* (1876), 13 Cox, C. C. 174).

(*p*) *R.* v. *Bird* (1891), 17 Cox, C. C. 387, where the averment was that the defendant had sworn he had seen a certain person at 11.15 a.m., but the evidence showed that the defendant had sworn he had seen him at 11.15, but without stating whether it was a.m. or p.m., and DAY, J., directed an acquittal. To prove what the defendant swore a witness must be called who heard his evidence given; a magistrate's clerk's notes or those of a shorthand writer may be used by the person who wrote them to refresh his memory in giving evidence, but they are not themselves evidence (*R.* v. *Newall* (1852), 6 Cox, C. C. 21), nor are the judge's notes (*R.* v. *Child* (1851), 5 Cox, C. C. 197, 203); what was said by the judge in delivering judgment in the court in which the oath was taken is not evidence (*R.* v. *Britton* (1893), 17 Cox, C. C. 627), nor is the result of the proceedings in that court (*R.* v. *Goodfellow* (1842), Car. & M. 569, 574; *R.* v. *Fontaine Moreau* (1848), 11 Q. B. 1028). The judge may apparently be subpœnaed to prove what evidence was given before him (*R.* v. *Morgan* (1852), 6 Cox, C. C. 107, 108, MARTIN, B.), but that course ought not to be taken (*R.* v. *Gazard* (1838), 8 C. & P. 595, PATTESON, J.); and it appears that persons occupying a judicial position, though they are competent witnesses, cannot be compelled to give evidence as to what has taken place before them when acting in that capacity (*Ellis* v. *Saltau* (1808), 4 C. & P. 327, n.; *Ponsford* v. *Swayne* (1861), 4 L. T. (N. S.) 15), and POLLOCK, B., is stated to have refused to give such evidence (2 Taylor, Evidence, 987, n.).

(*q*) As to proceedings in the High Court, see *R.* v. *Scott* (1877), 2 Q. B. D. 415, C. C. R., where it was held sufficient to produce the filed copies of the writ and pleadings. A sealed copy of the minutes of proceedings in a county court, certified by the registrar, are sufficient proof of such proceedings and of the regularity thereof, and of the due appointment of the judge or deputy judge (County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 28; *R.* v. *Roberts* (1878), 14 Cox, C. C. 101, C. C. R.). If the perjury is alleged to have taken place at a criminal trial, the proceedings may be proved by the production of the record by the officer of the court. A certificate containing the substance and effect only (omitting the formal part) of the indictment and trial for any felony or misdemeanour purporting to be signed by the clerk of the court or other officer of the court having custody of the records of the court where the indictment was tried, or his deputy, is upon the trial of any indictment for perjury or subornation of perjury sufficient evidence of the trial of such indictment without proof of the signature or official character of the person appearing to have signed the certificate (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 22). The indictment alone is not sufficient evidence of the proceedings (*R.* v. *Coles* (1887), 16 Cox, C. C. 165), but production by the officer of the court of the caption, indictment, and minutes from which the record would be drawn up is sufficient (*R.* v. *Newman* (1852), 2 Den. 390). If the alleged perjury was committed before justices the information must be proved and also the summons, and notice should be given to the defendant to produce the original

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Evidence must be given to prove that the alleged false statement was false to the defendant's knowledge. Further evidence may be given to show that the perjury was wilful and corrupt, *e.g.*, by proof of expressions of malice used by the defendant towards the person against whom he gave the false evidence (*r*).

Judge directing prosecution for perjury.

987. A judge of a superior court, justice or commissioner of assize, *nisi prius*, or gaol delivery, recorder, deputy recorder, chairman, or other judge of quarter sessions, judge or deputy judge of a county court or any court of record, justices of the peace in special or petty sessions, and a sheriff or deputy sheriff before whom any writ of inquiry or similar writ from any of the superior courts is executed, may, in case it shall appear that any person has been guilty of perjury in any evidence given or any affidavit etc. or other proceeding before him, direct such person to be prosecuted for such perjury and may commit him for trial (*s*).

Statutory declarations.

988. Declarations have been substituted by various statutes (*a*) for oaths and affidavits in many cases. In any case where a declaration is so substituted by statute for an oath, or is authorised by statute to be made, any person who wilfully and corruptly makes such a declaration knowing it to be untrue in any material particular is guilty of a misdemeanour (*b*).

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summons, if it was served upon him (*R.* v. *Newall* (1852), 6 Cox, C. C. 21; *R.* v. *Hurrell* (1862), 3 F. & F. 271; *R.* v. *Whybrow* (1861), 8 Cox, C. C. 438; *R.* v. *Dillon* (1877), 14 Cox, C. C. 4); but if the defendant appeared before the justices, proof of the summons is not necessary (*R.* v. *Shaw* (1865), Le. & Ca. 579, 586, 592; *R.* v. *Smith* (1867), L. R. 1 C. C. R. 110). To prove the jurisdiction of the justices upon a charge under the Licensing Acts with reference to licensed premises the licence must be put in evidence (*R.* v. *Lewis* (1872), 12 Cox, C. C. 163; *R.* v. *Evans* (1890), 17 Cox, C. C. 37). That a commissioner to administer oaths has acted as such is *primâ facie* evidence of his authority to take the oath, without proof of his commission (*R.* v. *Howard* (1832), 1 Mood. & R. 187; *R.* v. *Newton* (1844), 1 Car. & Kir. 469, 480). The commissioner need not be called as a witness, if the jurat of the affidavit states that the affidavit was taken before him by the defendant, and if his handwriting and that of the defendant are proved (*R.* v. *Morris* (1761), 2 Burr. 1189; *R.* v. *Spencer* (1824), 1 C. & P. 260).

(*r*) *R.* v. *Munton* (1829), 3 C. & P. 498. See *R.* v. *Stevens* (1826), 5 B. & C. 246.

(*s*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 19. As to commencing prosecutions for perjury while the proceeding in which the perjury is alleged to have been committed is still pending, see *R.* v. *Ingham* (1849), 14 Q. B. 396; *R.* v. *Ashburn* (1837), 8 C. & P. 50; *Peddell* v. *Rutter* (1837), 8 C. & P. 337.

(*a*) *E.g.*, Statutory Declarations Act, 1835 (5 & 6 Will. 4, c. 62). As to false declarations in matters relating to certain branches of the revenue, see s. 5; as to excise, Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 25; as to customs, Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 168; as to taxes, Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 66. See also pp. 536, 553, 557, *post*.

(*b*) Statutory Declarations Act, 1835 (5 & 6 Will. 4, c. 62), s. 21. See also Commissioners for Oaths Act, 1889 (52 Vict. c. 10), ss. 7, 11, which provides that any person making a false oath or declaration in accordance with the provisions of that Act shall be guilty of perjury. The Act applies (s. 1 (2)) to affidavits and declarations made for the purposes of any court or matter in England, including matters ecclesiastical or relating to applications for notarial faculties or the registration of any instrument whether under an Act of Parliament or otherwise. These offences are not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

The punishment for such an offence, where there is no other expressly mentioned, is fine and imprisonment without hard labour (*c*).

989. It is declared by statute (*d*) to be unlawful, and is therefore a misdemeanour punishable with fine and imprisonment without hard labour, for a justice of the peace or other person to administer, or cause to be administered, any oath, affidavit, or solemn affirmation touching any matter whereof such justice or other person had no jurisdiction or cognisance by some statute then in force.

False oath in a proceeding not judicial.

Although a false oath taken before anyone who has authority to administer an oath, but not taken in a judicial proceeding, does not properly speaking constitute perjury, the taking of such a false oath is a misdemeanour at common law, if it be done with an illegal or improper object and in a matter of public concern (*e*), and upon an indictment for perjury the defendant may be convicted of such misdemeanour, if the indictment states facts sufficient to constitute the offence of taking a false oath (*f*).

The punishment for taking such a false oath is imprisonment without hard labour and fine.

SUB-SECT. 3.—*Subornation of Perjury.*

Subornation of perjury.

990. Everyone is guilty of the common law misdemeanour of subornation of perjury who procures another person to take a false oath amounting to perjury.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*g*).

(*c*) The punishment for delivering a declaration in which the particulars required by the Revenue Act, 1869 (32 & 33 Vict. c. 14), are not fully and truly stated is a penalty of £20 (*ibid.*, s. 25); under the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), the penalty is £100 (*ibid.*, s. 168); under the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), the punishment is imprisonment without hard labour for not more than six months and a penalty of treble the amount of the duty for which the offender has been charged (*ibid.*, s. 66).

(*d*) Statutory Declarations Act, 1835 (5 & 6 Will. 4, c. 62), s. 13. There is an exception in favour of oaths required by the laws of foreign countries to give validity to instruments in writing to be used in such countries; as to the indictment in such a case, see *R.* v. *Nott* (1843), 4 Q. B. 768. As to unlawful oaths, see p. 465, *ante*.

(*e*) The following are instances:—*R.* v. *Chapman* (1849), 1 Den. 432 (false oath before a surrogate to obtain a marriage licence); *Re Rushton, Ex parte Overton* (1815), 2 Rose, 257 (affidavit in support of petition to stay a certificate in bankruptcy); *R.* v. *Hodgkiss* (1869), L. R. 1 C. C. R. 212 (affidavit for the purpose of getting a bill of sale filed). The making of a false affidavit for this purpose is now made perjury by the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 17. See title BILLS OF SALE, Vol. III., p. 48.

(*f*) *R.* v. *Hodgkiss, supra.*

(*g*) Perjury Act, 1728 (2 Geo. 2, c. 25), s. 2; Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), s. 2; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1). If a solicitor who has been convicted of perjury, subornation of perjury, forgery, or common barratry, afterwards acts as solicitor or agent in any action, the judge of the court in which the action is brought may inquire into the matter in a summary way and sentence him to penal servitude for seven years (Frivolous Arrests Act, 1725 (12 Geo. 1, c. 29), s. 4, made perpetual by the since repealed stat. (1747) 21 Geo. 2, c. 3).

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To attempt or conspire to persuade or incite a person to give false evidence, although not amounting to subornation of perjury unless the perjury is actually committed, is a misdemeanour at common law punishable by fine and imprisonment (*a*).

Attempting, by the manufacture of false evidence, to mislead a judicial tribunal and to pervert the course of justice is a common law misdemeanour, whether or not the tribunal is misled and even if it does not in fact sit (*b*).

Indictment.

991. In an indictment for subornation of perjury or for corrupt bargaining or contracting with any person to commit perjury, or for inciting, causing, or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly to take or subscribe any oath, affirmation, declaration, affidavit, deposition, notice, certificate, or other writing, it is sufficient, wherever such perjury or other offence has been committed, to allege the offence of the person who actually committed it in the same manner as in an indictment for perjury (*c*), and then to allege that the defendant unlawfully, wilfully, and corruptly caused and procured such person to do and commit the said offence in manner and form aforesaid. Where such perjury or other offence has not been committed, it is sufficient to set forth the substance of the offence charged upon the defendant without averring any of the matters unnecessary to be averred in the case of perjury (*d*).

SUB-SECT. 4.—*Interfering with Witnesses.*

Tampering with witnesses.

992. It is a common law misdemeanour, with the object of defeating the course of justice, to dissuade, intimidate, or prevent, or try to dissuade, intimidate, or prevent, a person who is bound to give evidence in a criminal matter from doing so (*e*).

The punishment for this offence is imprisonment with or without hard labour and fine (*f*).

It is a high contempt of court, punishable, either summarily by the court in which the matter is pending or on indictment, by fine and imprisonment with or without hard labour, to use such violent and inflammatory language at public meetings or otherwise as is

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(*a*) 1 Hawk. P. C., c. 27, ss. 9, 10; *R.* v. *Darby* (1702), 7 Mod. Rep. 100, 101; *R.* v. *Higgins* (1801), 2 East, 5, 17; stat. (1562-3) 5 Eliz. c. 9. As to dissuading witnesses from giving evidence, see p. 500, *post*.

(*b*) *R.* v. *Vreones*, [1891] 1 Q. B. 360, C. C. R. (fraudulently tampering with samples which would have been placed before an arbitrator, if an arbitration had taken place); *Omealy* v. *Newell* (1807), 8 East, 364 (putting forward a false affidavit sworn abroad, upon which perjury could not be assigned).

(*c*) See p. 493, *ante*.

(*d*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 21. As to the matters unnecessary to be averred in an indictment for perjury, see p. 493, *ante*.

(*e*) 1 Hawk. P. C., c. 6, s. 15; Stephen, Digest of the Criminal Law, 113; *R.* v. *Lawley* (1731), 2 Stra. 904; *R.* v. *Loughran* (1839), 1 Craw. & D. 79; *Shaw* v. *Shaw* (1861), 31 L. J. (P. M. & A.) 35; *Re Hooley* (*Rucker's Case*) (1898), 79 L. T. 306. As to subornation of perjury, see p. 497, *ante*.

(*f*) See Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29; *R.* v. *Steventon* (1802), 2 East, 362. This offence is triable at quarter sessions.

likely to influence the minds of witnesses who will be called upon to give evidence in a pending prosecution (*g*).

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993. Everyone is by statute (*h*) guilty of a misdemeanour who threatens or punishes or injures, or attempts to punish or injure, any person for having given evidence upon any inquiry held under a royal commission or by a parliamentary committee or pursuant to any statutory authority, unless such evidence was given in bad faith.

Witnesses at inquiries.

The punishment for this offence is a fine of £100 or imprisonment without hard labour for not more than three months (*i*).

SUB-SECT. 5.—*Barratry and Maintenance and Champerty.*

994. A barrator is a common mover and exciter, or maintainer, of suits and quarrels either in the courts themselves or in the country, as by a disturbance of the peace, or where the right to the possession of land is in controversy in taking or keeping possession by force, subtlety, or deceit, or by making false inventions and sowing calumnies, rumours, and reports whereby discord and disquiet may grow between neighbours (*k*).

Barratry.

The offence is a common law misdemeanour punishable by fine and imprisonment without hard labour (*l*).

995. Maintenance and champerty (*m*) are misdemeanours at common law (*n*), and specific punishments for various offences of

Maintenance etc.

(*g*) *R.* v. *Onslow and Whalley* (1873), 12 Cox, C. C. 358; and see title CONTEMPT OF COURT, Vol. VII., p. 290. The offence is triable at quarter sessions.

(*h*) Witnesses (Public Inquiries) Protection Act, 1892 (55 & 56 Vict. c. 64), s. 2. The case may be heard and determined by a court of summary jurisdiction, unless the prosecutor or the defendant wishes it to be sent for trial (s. 3). This offence is triable at quarter sessions, except, it seems, in the metropolitan area (*ibid.*).

(*i*) *Ibid.*, s. 2. The offender may also be ordered to pay compensation to the person injured (s. 4).

(*k*) Co. Litt. 368 a. No one can be a barrator in respect of one act only. The indictment must charge the defendant with being a *common* barrator (1 Hawk. P. C., c. 27, s. 5); particulars of the specific instances intended to be proved must be given to the defendant (*ibid.*, s. 13), and the prosecution will not be allowed to give evidence of any other instances than those specified in the particulars (*I'Anson* v. *Stuart* (1787), 1 Term Rep. 748, 754). With the exception of *R.* v. *Bellgrave* (Guildford Assizes, 1889, referred to in Archbold, Criminal Pleading, p. 1079) it is believed that there has not been a prosecution for barratry for many years. Barratry is also used in another sense to mean a fraud committed by the master or seamen of a ship (see *Earle* v. *Rowcroft* (1806), 8 East, 126, and title INSURANCE). Barratry of this kind is a crime (*Todd* v. *Ritchie* (1816), 1 Stark. 240), but is not indictable *eo nomine*, but under the name of some such offence as larceny, fraud, malicious injury, or piracy.

(*l*) 1 Hawk. P. C., c. 27, s. 14. A person who, after being convicted of barratry, practises as a solicitor in the High Court, may be punished summarily by that court and sentenced to seven years' penal servitude, or to imprisonment with or without hard labour for two years (Frivolous Arrests Act, 1725 (12 Geo. 1, c. 29), s. 4, made perpetual by stat. (1747) 21 Geo. 2, c. 3). *Quære*, whether barratry is triable at quarter sessions.

(*m*) As to what constitutes maintenance and champerty, and the exceptions to the rule that they are illegal, see title ACTION, Vol. I., p. 51.

(*n*) 1 Hawk. P. C., c. 27, s. 4; *Pechell* v. *Watson* (1841), 8 M. & W. 691, 700.

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this character are provided by ancient statutes (*o*), which still remain unrepealed, but which have fallen into disuse (*p*).

It is lawful for persons to combine together to prosecute a guilty person or one against whom there are reasonable grounds of suspicion (*q*); but, in cases in which the maintenance of civil suits is illegal (*r*), combinations to maintain such suits are punishable, whether they are well founded or not, every conspiracy to commit an illegal act being an indictable misdemeanour (*s*).

SUB-SECT. 6.—*Conspiracy to obstruct the Course of Justice.*

Conspiracy to obstruct the course of justice.

996. It is a misdemeanour at common law for two or more persons to conspire together (*t*) to obstruct, defeat, pervert or prevent the course of public justice (*u*), either by bringing a false criminal charge against a man (*a*) or by preventing a witness from giving evidence in a criminal prosecution or agreeing with him that he should not attend at the trial for that purpose (*b*), or by publishing matter calculated to interfere with the course of justice or to pervert the minds of the court or of the jurors (*c*), or by producing in court evidence known to be false (*d*).

The punishment for the offence is fine and imprisonment with or without hard labour (*e*).

It is no defence to a charge of conspiracy to accuse of a crime that the indictment or other proceedings preferred or intended to be preferred were insufficient, or that the court had no jurisdiction, or that the charge was not a grave one (*f*).

(*o*) Stats. (1275) 3 Edw. 1, cc. 25, 28 (stat. Westminster the First); (1285) 13 Edw. 1, c. 49 (stat. Westminster the Second); (1300) 28 Edw. 1, c. 11; (1305) 33 Edw. 1; (1327) 1 Edw. 3, c. 14; (1377) 1 Ric. 2, c. 4; (1383) 7 Ric. 2, c. 15; (1540) 32 Hen. 8, c. 9.

(*p*) There has been no prosecution for such an offence for many years.

(*q*) *R.* v. *Best* (1704), 1 Salk. 174; 1 Hawk. P. C., c. 27, s. 7.

(*r*) See title ACTION, Vol. I., pp. 51 *et seq.*

(*s*) *R.* v. *Opie* (1670), 1 Wms. Saund. (ed. 1845) 300, k, where the information was for a conspiracy to obtain a verdict in a civil action by bribing two persons to procure themselves to be sworn as jurors.

(*t*) As to conspiracy, see p. 260, *ante*. As to compounding offences, see p. 503, *post*.

(*u*) See Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29.

(*a*) Stat. (1305) 33 Edw. 1, c. 4 (Ordinacio de Conspiratoribus); *R.* v. *Rispal* (1762), 3 Burr. 1320; *R.* v. *Spragg* (1760), 2 Burr. 993. If the object of the conspiracy to bring a criminal charge be to extort money, and the indictment so alleges, it is immaterial whether the charge is true or false (*R.* v. *Hollingberry* (1825), 4 B. & C. 329; *R.* v. *Jacobs* (1845), 1 Cox, C. C. 173). See also *R.* v. *McDaniel* (1755), Fost. 121; 19 State Tr. 809, where the person accused of the crime connived at the accusation and was a party to the conspiracy, the object being fraudulently to obtain a reward.

(*b*) *R.* v. *Steventon* (1802), 2 East, 362; *R.* v. *Hamp* (1852), 6 Cox, C. C. 167.

(*c*) *R.* v. *Tibbits*, [1902] 1 K. B. 77, 90, C. C. R.

(*d*) *R.* v. *Mawbey* (1796), 6 Term Rep. 619, 635, where the defendants were convicted of conspiracy to put in evidence a false certificate under their hands as justices with reference to the repair of a highway. A conspiracy to charge a man falsely with being the father of a bastard child is indictable (*R.* v. *Best* (1704), 1 Salk. 174).

(*e*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29. A conspiracy to commit perjury or subornation of perjury, or to forge evidence, or to destroy wills or evidence of title to realty, is not triable at quarter sessions, but conspiracies to defeat the ends of justice by other means are triable in such a court (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*f*) 1 Hawk. P. C., c. 27, s. 3; *R.* v. *Rispal*, *supra*. So where a man maliciously

997. Everyone is guilty of a misdemeanour at common law who destroys or disposes of a dead body in order to prevent an inquest being held, in a case where an inquest may lawfully be held (*g*).

The punishment for this offence is fine and imprisonment without hard labour (*h*).

SUB-SECT. 7.—*Contempt of Court.*

Contempt of court.

998. It is a contempt of any court of justice to disturb and obstruct the court by insulting it in its presence and at a time when it is actually sitting (*i*), or to disobey its orders or warrants made within its jurisdiction (*j*), or to publish matter likely to impede the course of justice by prejudicing parties before their cause is heard, or to intimidate or influence jurors or witnesses (*k*), or to scandalise the court itself.

Contempt of court is a misdemeanour at common law and punishable by fine and imprisonment without hard labour (*l*).

Contempt of a court of record is also punishable summarily by committal or attachment by that court, and this is the course usually taken (*m*). But in all cases the remedy by indictment remains.

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prefers an indictment, he is liable to an action, although the indictment may have been defective (*Pippet* v. *Hearn* (1822), 5 B. & Ald. 634).

(*g*) *Anon.* (1702), 7 Mod. Rep. 10; *R.* v. *Price* (1884), 12 Q. B. D. 247; *R.* v. *Stephenson* (1884), 13 Q. B. D. 331, 338, C. C. R. As to cases in which an inquest may lawfully be held, see title CORONERS, Vol. VIII., p. 239.

(*h*) This offence is triable at quarter sessions.

(*i*) *R.* v. *Harrison* (1638), Cro. Car. 503; *Ex parte Marlborough* (*Duke*) (1844), 5 Q. B. 955; and see the judgment of the court delivered by CAVE, J., in *R.* v. *Brompton County Court Judge*, [1893] 2 Q. B. 195. HOLT, C.J., appears to have thought that a mere insolent expression used to a judge in court was not indictable (*R.* v. *Rogers* (1702), 7 Mod. Rep. 28; and see *R.* v. *Nun* (1713), 10 Mod. Rep. 186), and that the proper punishment was to proceed summarily for contempt. But see 2 Hawk. P. C., c. 22, s. 35. In the case of a contempt of a court not of record, the only remedy is to order the removal of the offender or to proceed by indictment or information. The court itself has no power to commit, and the King's Bench Division of the High Court of Justice has no summary power in such a case (*Ex parte Hyndman* (1886), 2 T. L. R. 351). See *Willis* v. *Maclachlan* (1876), 1 Ex. D. 376; *R.* v. *Webb*, *Ex parte Hawker*, *Times*, 24th January, 1899, p. 13; as to criminal informations for libel in such a case, see *R.* v. *Watson* (1878), 23 Sol. Jo. 86; *Ex parte Radnor* (*Earl*) (1869), 33 J. P. 740; *R.* v. *Masters* (1889), 6 T. L. R. 44; *R.* v. *Russell*, *Ex parte Morris* (1905), 69 J. P. 450.

(*j*) As to the powers of the sheriff to arrest those who resist him in the execution of writs, see Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 8 (2).

(*k*) See pp. 489, 498, *ante*.

(*l*) Dickinson's Quarter Sessions, 6th ed. 309. The offence is triable at quarter sessions, *ibid.*

(*m*) Upon the subject of contempt of court generally and its summary punishment, see title CONTEMPT OF COURT, Vol. VII., pp. 280, 307. Nearly all the cases in which the offence has been punished on indictment are where the orders of justices in quarter or petty sessions have been disobeyed. See *R.* v. *Robinson* (1759), 2 Burr. 799, 804 (order of quarter sessions to maintain children); *R.* v. *Johnson* (1816), 4 M. & S. 515 (order of quarter sessions on treasurer to pay costs of a prosecution); *R.* v. *Jeyes* (1835), 3 Ad. & El. 416 (similar order by a court of

SECT. 4. Offences relating to the Administration of Justice.

In the case of disobedience of an order by a ministerial officer the proper remedy is by indictment, or by attachment if the court has power to attach (*n*).

999. A person cannot be found guilty of disobedience to the order of a court, if the order was made in a matter in which the court making it had no jurisdiction (*o*), but if there was jurisdiction to make the order, the question whether it was rightly made on the merits will not be considered (*p*).

The defendant may give in evidence by way of excuse that he has done everything in his power to obey the order (*q*).

Personal service of the whole order, or a copy, must have been made on the defendant (*r*).

Insulting magistrates and judges.

1000. An indictment or information will not lie for insulting words spoken to or of a magistrate when he is not sitting as such, unless the tendency of the words is to provoke a breach of the peace (*s*); but scandalising a judge by personal scurrilous abuse of him as a judge, or any act done or writing published which is calculated to bring a court into contempt or to lower the authority of the judge of the court, is contempt of court, and is punishable by indictment or information as well as by the summary process of committal (*t*).

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assize); *R.* v. *Brisby* (1849), 1 Den. 416 (bastardy order made at petty sessions); see also *R.* v. *Ferrall* (1850), 2 Den. 51); *R.* v. *Sewell* (1845), 8 Q. B. 161 (order of restitution of premises by justices of assize under the Distress for Rent Act, 1737 (11 Geo. 2, c. 19, s. 17)); *R.* v. *Walker* (1875), 13 Cox, C. C. 94 (order against waste made by the Epping Forest Commissioners under the Epping Forest Amendment Act, 1872 (35 & 36 Vict. c. 95), s. 5). The last-mentioned case is, however, rather an illustration of the principle that it is a misdemeanour at common law to obstruct the due execution of an Act of Parliament or of the powers given by it, as to which see also *R.* v. *Smith* (1780), 2 Doug. (K. B.) 441. See p. 232, *ante*.

(*n*) An indictment or attachment is the proper proceeding, and a mandamus will not be granted when a public officer has received an order from his masters or any competent authority and disobeys it; when there is no such order and an act is required to be done, a mandamus will be granted; and when there is such an order and the ministerial officer is only put forward as the nominal party and there are other persons who are really to be acted on by the mandamus, the mandamus will be granted (*R.* v. *Bristow* (1795), 6 Term Rep. 168; *R.* v. *Surrey* (*County Treasurer*) (1819), 1 Chit. 650; *R.* v. *Wood Ditton* (*Highway Surveyors*) (1849), 18 L. J. (M. C.) 218; see also *R.* v. *Payn* (1837), 6 Ad. & El. 392, 401; *R.* v. *Oswestry* (*Treasurer*) (1848), 12 Q. B. 239).

(*o*) *R.* v. *Hollis* (1819), 2 Stark. 536; *R.* v. *Soper* (1825), 3 B. & C. 857.

(*p*) *R.* v. *Mytton* (1785), 4 Doug. (K. B.) 333; *R.* v. *Gilkes* (1827), 3 C. & P. 52.

(*q*) *R.* v. *Gash* (1817), 1 Stark. 441, 445.

(*r*) *R.* v. *Kingston* (1806), 8 East, 41; *R.* v. *Jones* (1840), 2 Mood. C. C. 171.

(*s*) *Ex parte Chapman* (1836), 4 Ad. & El. 773; and see *Ex parte Marlborough* (*Duke*) (1844), 5 Q. B. 955; *R.* v. *Revel* (1721), 1 Stra. 420; *R.* v. *Pocock* (1741), 2 Stra. 1157; *R.* v. *Weltje* (1809), 2 Camp. 142.

(*t*) *R.* v. *Read and Huggonson* (1742), 2 Atk. 469, 471; *McLeod* v. *St. Aubyn*, [1899] A. C. 549, 561, P. C.; *R.* v. *Gray*, [1900] 2 Q. B. 36, 40, 41. But honest, though adverse, criticism in temperate language of the conduct of a judge is permissible, and much latitude will in such a case be allowed (*R.* v. *Gray*, *supra*, at p. 40). And see title CONTEMPT OF COURT, Vol. VII., pp. 283 *et seq.*

SECT. 5.—*Offences relating to Arrest, the Prosecution and Punishment of Criminals, and the Execution of Civil Process.*

SECT. 5. Offences relating to Arrest, Prosecution etc.

SUB-SECT. 1.—*Misprision.*

Misprision of treason.

1001. Misprision of treason is a common law misdemeanour, and consists in the bare knowledge and concealment of high treason without any degree of assent thereto (*u*).

A mere general knowledge that a rebellion is intended without any knowledge of the persons engaged or of particulars of the design is not sufficient to constitute the offence (*x*).

A person knowing that treason is plotted or committed is bound to reveal it as soon as he can to a judge of assize or a justice of the peace (*y*).

Two witnesses are necessary for a conviction, as in treason (*a*).

The punishment for misprision of treason is imprisonment for life, with forfeiture of goods and of the profits of lands for life (*b*).

Misprision of felony.

1002. Misprision of felony is a common law misdemeanour, and consists of the concealing of a felony by a person who knows of but does not consent to it.

This offence is punishable by fine and imprisonment without hard labour (*c*). In the case of an officer, as a sheriff or bailiff, the term of imprisonment is fixed at one year, as well as a ransom at the King's pleasure (*d*).

SUB-SECT. 2.—*Compounding Offences.*

Compounding felony.

1003. It is a misdemeanour at common law (*e*) to compound a felony, *i.e.*, to agree in consideration of the return of goods stolen or of any other advantage not to prosecute a person who has committed a felony.

The punishment for the offence is fine and imprisonment without hard labour (*f*).

It is no offence to abstain from prosecuting (*g*), or simply to promise not to prosecute, or to take back goods which have been

(*u*) Stat. (1554) 1 & 2 Ph. & Mar. c. 5, s. 8; 1 Hawk. P. C., c. 5, s. 2; 1 Hale, P. C. 371. And see title CONSTITUTIONAL LAW, Vol. VI., p. 353. As to infants, see note (*q*) on p. 240, *ante*.

(*x*) Kel. 21.

(*y*) 1 Hale, P. C. 372. It would probably now be sufficient, if the information were given to a responsible officer of police.

(*a*) 1 Hale, P. C. 300.

(*b*) 2 Hawk. P. C., c. 48, s. 15; 1 Hale, P. C. 374. The Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 1, appears not to apply to this offence, which is neither treason nor felony. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*c*) 1 Hale, P. C. 374. The offence is triable at quarter sessions. As to infants, see note (*q*) on p. 240, *ante*.

(*d*) *Ibid.* There has been no prosecution for this offence for many years. The expression "misprison of felony" has "somewhat passed into desuetude" (*Williams* v. *Bayley* (1866), L. R. 1 H. L. 200, at p. 220, *per* Lord WESTBURY; but the fact that mere concealment of a felony without any participation in it is still a criminal offence may affect the validity of a transaction based on such concealment (see *Williams* v. *Bayley* (1866), L. R. 1 H. L. 200, 220).

(*e*) 3 Co. Inst. 134; 1 Hawk. P. C., c. 7, ss. 5, 6, 7. The offence was anciently known as theft-bote.

(*f*) The offence is triable at quarter sessions.

(*g*) See *supra*.

SECT. 5. Offences relating to Arrest, Prosecution etc.

stolen, unless they are returned in consideration of a promise to favour the thief either by not prosecuting him or otherwise (*h*).

It is the agreement not to prosecute which constitutes the offence, and it is immaterial whether there is or is not a subsequent failure to prosecute (*i*). A person may be convicted of the offence of compounding a larceny although he is not the owner of the stolen goods (*j*).

Compounding misdemeanour.

An agreement to compound a misdemeanour of a public nature, even if made with the consent of the judge at the trial, is unlawful in the sense that such an agreement can give rise to no civil right and no action can be brought upon it (*k*); in some cases, when the object of the agreement is to obstruct or prevent the course of justice, the persons who enter into such an agreement are, it seems, guilty of a common law misdemeanour (*l*).

Compounding a penal action.

1004. It is by statute (*m*) a misdemeanour for a common informer or plaintiff in an action on a penal statute to compound or agree with a person alleged to have offended against such statute, until the defendant has made his answer in court, and such compounding is then only lawful with the consent of the court.

The offence may be committed, even although proceedings for a penalty have not been commenced (*n*), and even if there has been no offence against the penal statute, if money is taken to prevent threatened proceedings under the statute (*o*).

The offence is not committed, if the infringement of the penal statute is only cognisable by magistrates (*p*).

The punishment for this offence is fine or imprisonment without hard labour or both, and the offender is upon conviction disqualified from thereafter suing upon any penal statute (*q*).

SUB-SECT. 3.—*Corrupt Rewards.*

Corrupt taking of reward for restoration of stolen property.

1005. Everyone is by statute (*r*) guilty of a felony who corruptly takes any money or reward directly or indirectly under pretence or

(*h*) 1 Hawk. P. C., c. 7, s. 7.

(*i*) *R.* v. *Burgess* (1885), 16 Q. B. D. 141, C. C. R.; but see *R.* v. *Stone* (1830), 4 C. & P. 379, where an acquittal was directed because after the compounding the defendant had in fact prosecuted the felon to conviction, which case, however, cannot, since *R.* v. *Burgess*, *supra*, be considered as of any authority.

(*j*) *R.* v. *Burgess*, *supra*.

(*k*) *Collins* v. *Blantern* (1767), 2 Wils. 341; 1 Smith, L. C., 11th ed., 369; *Keir* v. *Leeman* (1844), 6 Q. B. 308; (1846), 9 Q. B. 371, Ex. Ch.; *Windhill Local Board of Health* v. *Vint* (1890), 45 Ch. D. 351, C. A.

(*l*) See *per* WILMOT, C.J., in *Collins* v. *Blantern*, *supra*, at p. 373: "this is an agreement to stifle a prosecution for wilful and corrupt perjury, a crime most detrimental to the commonwealth; for it is the duty of every man to prosecute, appear against, and bring offenders of this sort to justice. Many felonies are not so enormous offences as perjury, and therefore to stifle a prosecution for perjury seems to be a greater offence than compounding some felonies." It is probable that many cases of this kind may be punishable as conspiracies to defeat the ends of justice (see p. 500, *ante*).

(*m*) Stat. (1575-6) 18 Eliz. c. 5, ss. 4, 5.

(*n*) *R.* v. *Gotley* (1805), Russ. & Ry. 84.

(*o*) *R.* v. *Best* (1839), 9 C. & P. 368.

(*p*) *R.* v. *Crisp* (1818), 1 B. & Ald. 282.

(*q*) Stat. (1575-6) 18 Eliz. c. 5, ss. 4, 5; Pillory Abolition Act, 1816 (56 Geo. 3, c. 138), s. 2. The offence is triable at quarter sessions.

(*r*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 101. Whoever (1) publicly

upon account of helping any person to any chattel, money, valuable security or other property which has by any felony or misdemeanour been stolen, taken, obtained, extorted, embezzled, converted, or disposed of, unless the person taking such reward shall have used due diligence to cause the offender to be brought to trial for his offence.

The reward is "corruptly" taken if it is received dishonestly, under false pretences, and with a false and sinister design, and with no intention to detect or discover the thief (*s*). It is unnecessary to show that the reward was paid before the property was restored, if it was so paid in pursuance of a previous agreement to that effect (*t*).

Meaning of corruptly.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years; if the offender is a male under eighteen years, whipping may be also ordered (*u*).

1006. Everyone is by statute (*x*) guilty of a misdemeanour who corruptly takes any money or reward under pretence of aiding any person to recover a dog which has been stolen or is in the possession of a person not the owner.

Dogs.

The punishment for this offence is imprisonment for not more than eighteen months with or without hard labour (*y*).

SUB-SECT. 4.—*Resisting or obstructing a Peace Officer* (*a*).

1007. Everyone is by statute (*b*) guilty of a misdemeanour who (1) assaults, resists, or wilfully obstructs any peace officer in the

Resisting peace officer.

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advertises a reward for the return of any property (see *Mirams* v. *Our Dogs Publishing Co.*, [1901] 2 K. B. 564, C. A.) which has been stolen or lost, and in such advertisement uses any words purporting that no questions will be asked; or (2) makes use of any words in any public advertisement purporting that a reward will be paid for any property stolen or lost without seizing or making inquiry after the person producing it; or (3) offers in any such public advertisement to return to any pawnbroker or other person who may have bought or lent money upon any property stolen or lost the money so paid or lent, or any other reward for the return of such property; or (4) who prints or publishes any such advertisement, is liable to forfeit £50 and costs to any person who will sue for it (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 102). If such an action is brought against the printer or publisher of a newspaper, it must be commenced within six months, and the assent in writing of the Attorney-General or Solicitor-General must be first obtained (Larceny (Advertisements) Act, 1870 (33 & 34 Vict. c. 65), s. 3).

(*s*) *R.* v. *King* (1844), 1 Cox, C. C. 36, *per* TINDAL, C.J., decided on a similar provision in 7 & 8 Geo. 4, c. 29, s. 58; see also *R.* v. *Hart* (1843), 2 L. T. (o. s.) 248; *R.* v. *Pascoe* (1849), 3 Cox, C. C. 462, C. C. R., in which, the jury having found that the prisoner knew the thieves and assisted the prosecutrix as her agent in endeavouring to purchase the stolen property from them, not meaning to bring the thieves to justice, the court held that this finding established all the facts necessary to constitute the offence; see also *R.* v. *Ledbitter* (1825), 1 Mood. C. C. 76.

(*t*) *R.* v. *O'Donnell* (1857), 7 Cox, C. C. 337, C. C. R. (Ir.).

(*u*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 101; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions. As to the power to require the accused person to enter into recognisances see p. 412, *ante*.

(*x*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 20.

(*y*) *Ibid.* The offence is triable at quarter sessions.

(*a*) See also p. 573, *post*.

(*b*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 38. This offence is triable at quarter sessions.

SECT. 5. Offences relating to Arrest, Prosecution etc.

due execution of his duty, or any person acting in aid of such officer; or (2) who assaults any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence.

To warn a person with a view to prevent him from committing an offence is not an obstructing of a police officer who is seeking to obtain evidence upon which to prosecute him (*c*). It is doubtful whether the obstruction to be punishable need be either a physical act or a threat (*d*).

A person resisting a peace officer cannot be convicted of this offence, unless the officer was acting strictly within the limits of his powers and legal duty (*e*). Although a person is entitled to resist an arrest which a constable is not authorised to make, he is guilty of an assault if he uses more violence than is reasonably necessary for the purpose (*f*). It is not necessary to show that the defendant knew that the person arresting him was a police constable (*g*).

The punishment for such offence is imprisonment for not more than two years with or without hard labour (*h*).

Refusing to assist a peace officer.

1008. Every person is guilty of a common law misdemeanour who refuses to assist a peace officer in the execution of his duty in preventing a breach of the peace, when there is a reasonable necessity for calling upon such person, and such person is called upon to assist the officer and is not prevented by any physical

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(*c*) *Bastable* v. *Little*, [1907] 1 K. B. 59.

(*d*) If a policeman in seeking for information which might lead to the conviction of the perpetrators of a crime is wilfully misled by false information, the person giving the false information would seem to be committing an offence against the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 38 (*Bastable* v. *Little*, *supra*, *per* DARLING, J., at p. 63).

(*e*) In the following cases the resistance was held to be justifiable:—*R.* v. *Sanders* (1867), L. R. 1 C. C. R. 75 (arrest by a county police constable instead of by a parish constable); *R.* v. *Cumpton* (1880), 5 Q. B. D. 341, C. C. R. (arrest in the city of W., which had a separate commission of the peace, by constables of the county of W. under a warrant not backed by a justice of the city); *Codd* v. *Cabe* (1876), 1 Ex. D. 352 (arrest under warrant for offence less than felony, the officer not having the warrant with him); *R.* v. *Prebble* (1858), 1 F. & F. 325 (resisting constable who was clearing a public-house, there being no nuisance or danger of a breach of the peace or any illegal act committed); see also *R.* v. *Spencer* (1863), 3 F. & F. 857; *R.* v. *Light* (1857), Dears. & B. 332; *R.* v. *Marsden* (1868), L. R. 1 C. C. R. 131; *R.* v. *Roxburgh* (1871), 12 Cox, C. C. 8.

(*f*) *R.* v. *Mabel* (1840), 9 C. & P. 474.

(*g*) *R.* v. *Forbes* (1865), 10 Cox, C. C. 362, *per* RUSSELL GURNEY, Recorder of London; *R.* v. *Maxwell* (1909), 73 J. P. 176, C. C. A.

(*h*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 38. This offence is triable at quarter sessions.

A person who commits an assault upon a constable in the execution of his duty may also be dealt with summarily and sentenced to a fine of £20 or imprisonment with or without hard labour for six months, or, upon a second conviction within two years, to nine months' imprisonment with or without hard labour (Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 12); see also, as to the summary jurisdiction, Prevention of Crimes Amendment Act, 1885 (48 & 49 Vict. c. 75), s. 2. Anyone may apprehend any person found committing an indictable offence in the night; a person so apprehended who assaults or offers any violence to anyone authorised to apprehend him is guilty of a misdemeanour, the punishment for which is three years' imprisonment with or without hard labour under the Prevention of Offences Act, 1851 (14 & 15 Vict. c. 19), s. 12.

impossibility or lawful excuse (*i*). It is immaterial that the assistance would have been useless if it had been rendered (*j*).

The punishment for this offence is fine and imprisonment without hard labour (*k*).

SUB-SECT. 5.—*Offences relating to Prisons etc.*

(i.) *Prison Breach.*

Breach of prison.

1009. A person is guilty of the common law offence of breach of prison who, while lawfully in the custody of the law for any cause whatever, whether criminal or civil, and whether he is actually within the walls of a prison or in the custody of any person who has lawfully arrested him, escapes from that custody by the use of any force (*l*). If the prisoner is under detention upon a charge of treason or felony, whether he has been convicted or not, the breach of prison is a felony; the punishment is then penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*m*); if the detention is upon a lesser charge, breach of prison is a misdemeanour (*n*); the punishment in that case is fine and imprisonment with or without hard labour (*o*).

A prisoner may be convicted of breach of prison, although he has not been tried for the offence in respect of which he was committed (*p*), but if he is first tried on indictment for the latter offence and acquitted, it seems that he cannot afterwards be convicted of the breach of prison (*q*).

(*i*) *R.* v. *Brown* (1841), Car. & M. 314; *R.* v. *Sherlock* (1866), L. R. 1 C. C. R. 20. There appears to be no modern authority that there is a legal duty to afford physical assistance to the police to arrest in cases other than those involving a then existing or threatened breach of the peace, and in the older text-books the obligation seems to be confined to the case of affrays. See Dalton, Country Justice (ed. 1705), c. 8, p. 35; and Ritson on "The Office of Constable" (1815) at p. 40.

(*j*) *R.* v. *Brown*, *supra*.

(*k*) This offence is triable at quarter sessions. As to resistance to a sheriff, see Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 8 (2).

(*l*) 2 Hawk. P. C., c. 18, ss. 1, 4; *R.* v. *Haswell* (1821), Russ. & Ry. 458. If the person detained leaves the prison or escapes from custody without the use of force, the offence is called an "escape"; see p. 508, *post*.

(*m*) Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 8; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1; (1295), 23 Edw. 1, statute *de frangentibus prisonam*.

(*n*) 2 Hawk. P. C., c. 18, ss. 1, 8, 15, 16. It has been doubted whether there can be a conviction for breach of prison, if the committal is for a felony which has not in fact been committed by anyone (*ibid.* s. 15; 1 Hale, P. C. 610; but see *R.* v. *Waters* (1873), 12 Cox, C. C. 390). It is submitted that this can only depend upon whether the prisoner was at the time in lawful custody or not. If, for instance, he were arrested by a private person upon suspicion of a felony which had not been committed, he could not be convicted of breach of prison, if he freed himself from the custody of that person.

(*o*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29. Breach of prison is triable at quarter sessions.

(*p*) 2 Co. Inst. 592.

(*q*) 1 Hale, P. C. 611. Where a prisoner upon a charge of felony made his escape while under remand before the magistrates, and was afterwards recaptured and the original charge then dismissed, it was held that he might nevertheless be indicted for the breach of prison, the dismissal by the justices not being equivalent to an acquittal on an indictment (*R.* v. *Waters* (1873), 12 Cox, C. C. (MARTIN, B.) 390).

SECT. 5. Offences relating to Arrest, Prosecution etc.

No breach of prison amounts to felony, unless the prisoner actually escapes (*r*). There must be an actual breaking and the use of some real force or violence, but the offence is committed even though the breaking may have been done accidentally in the course of the escape (*s*).

If a prisoner breaks out of prison to save his life, as in the case of fire, he is not guilty of breach of prison, but it is otherwise if he himself has fired the prison (*t*).

Vagrants.

1010. By statute (*u*) a person breaking or escaping out of any place of legal confinement before the expiration of the term for which he is committed by virtue of the Vagrancy Act, 1825 (*v*), is to be deemed an incorrigible rogue and liable as such to be committed to prison until the next quarter sessions. At quarter sessions he may be ordered to be imprisoned with or without hard labour for not more than a year and to be whipped (*a*).

(ii.) *Escape.*

Escape.

1011. At common law every person is guilty of an escape (*b*) who, (1) being a prisoner, without force, escapes from custody or prison (*c*); (2) being an officer, intentionally or negligently allows a prisoner to escape from his custody; (3) being a private person, and having a person in his lawful custody, permits him to escape. In all these cases it is immaterial whether the escape is before or after conviction, or whether the prisoner was guilty or not, or whether he was at the time of the escape actually in prison or on his way there or detained for the purpose of being sent there.

By prisoner.

If a prisoner escapes from any lawful custody, without force but by artifice or similar means, he commits a common law misdemeanour punishable by fine and imprisonment (*d*).

By officer.

1012. To render an officer guilty of an escape, there must first have been an actual and lawful arrest. If the arrest was of such a

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(*r*) 2 Hawk. P. C., c. 18, s. 11. But an attempt, by breaking the prison, to escape will be a misdemeanour.

(*s*) 2 Hawk. P. C., c. 18, s. 8; *R.* v. *Haswell* (1821), Russ. & Ry. 458.

(*t*) 1 Hale, P. C. 611.

(*s*) 2 Hawk. P. C., c. 18, s. 20.

(*u*) Vagrancy Act, 1825 (5 Geo. 4, c. 83), s. 5.

(*v*) *Ibid.*

(*a*) *Ibid.*, s. 10. An offender who has been ordered to be confined in Parkhurst prison, and who breaks prison, is, if he is under sentence of imprisonment, to receive an addition of not more than two years to his term; if he is under a sentence of penal servitude, he is to be treated in the same way as other offenders who escape from penal servitude (see Transportation Act, 1824 (5 Geo. 4, c. 84), s. 22); if such an offender is convicted of a recent escape, he is to be adjudged guilty of felony. An attempt to break prison is punishable by an addition of not more than twelve months' imprisonment to the sentence which the offender is undergoing (Parkhurst Prison Act, 1838 (1 & 2 Vict. c. 82), s. 12). As to escape from Pentonville Prison, see Pentonville Prison Act. 1842 (5 & 6 Vict. c. 29), s. 24.

(*b*) See p. 507, *ante*, and p. 511, *post*.

(*c*) If force is used, the offence is breach of prison; see p. 507, *ante*.

(*d*) 2 Hawk. P. C., c. 17, s. 5. If the escaping prisoner was in custody on a criminal charge hard labour may be added (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29). This offence is triable at quarter sessions.

nature that the prisoner would have been justified in escaping, the officer is equally justified in releasing him (*e*).

An escape of which an officer is guilty may be either voluntary or negligent. An officer who is guilty of a voluntary escape is punishable in the same way as the escaped prisoner who was in custody (*f*), and forfeits his office (*g*).

If a person under detention for felony is guilty of the felony for which he is detained, the officer voluntarily permitting him to go is an accessory after the fact to that offence (*h*).

Negligence.

An officer who negligently allows his prisoner to escape is liable to be fined (*i*). A head gaoler may be fined, when an escape has taken place by the negligence or even by the voluntary action of his subordinate (*k*). If a prisoner escapes from gaol or from an officer, the presumption is that the gaoler or officer was negligent, as he should have seen that the gaol was secure, or have taken a sufficient force to convey the person arrested to prison; but it is open to him to rebut this presumption (*l*).

Recapture.

A gaoler or other officer is entitled to recapture a prisoner who has escaped by his negligence, and if he does so upon fresh pursuit and without losing sight of him, the officer cannot be convicted of an escape, as the law will assume that the prisoner still remained in his custody (*m*).

By private person.

1013. A private person who has lawfully arrested another (*n*) is not only entitled, but bound, to hand him over to a person who by law ought to have the custody of him. If instead of doing so he either voluntarily or negligently permits the person so arrested to escape, he is liable to the same extent and punishable in the same way as an officer. The liability of the private person ceases upon the delivery of the prisoner to a proper officer (*o*).

Aiding a prisoner to escape from custody on civil process.

It is a common law misdemeanour to aid a person to escape from lawful custody on civil process (*p*).

(*e*) 2 Hawk. P. C., c. 19, ss. 2, 3.

(*f*) 1 Hale, P. C. 593; 2 Hawk. P. C., c. 19, ss. 22, 25. This offence is triable at quarter sessions, except where the felony of which the prisoner is guilty could not be tried there.

(*g*) 2 Hawk. P. C., c. 19, s. 30.

(*h*) *R.* v. *Burridge* (1735), 3 P. Wms. 439, 485.

(*i*) 1 Hale, P. C. 603; 2 Hawk. P. C., c. 19, s. 31. The fine at common law was £100, if the prisoner escaping was an attainted felon, £5 if he had been indicted but not attainted, and discretionary in other cases (2 Hawk. P. C., c. 19, s. 33).

(*k*) 2 Hawk. P. C., c. 19, ss. 27, 29; *Woodgate* v. *Knatchbull* (1787), 2 Term Rep. 148, 156.

(*l*) 1 Hale, P. C. 601; 2 Hawk. P. C., c. 19, ss. 15, 16.

(*m*) 1 Hale, P. C. 602; 2 Hawk. P. C., c. 19, ss. 6, 13. As to recapture by an officer who voluntarily allows a prisoner to escape, see 2 Hawk. P. C., c. 19, s. 12.

(*n*) As to the circumstances under which a private person may lawfully arrest, see p. 296.

(*o*) 1 Hale, P. C. 595; 2 Hawk. P. C., c. 20.

(*p*) *R.* v. *Allan* (1841), Car. & M. 295, where the prisoner aided had been arrested under a *ca. sa.* and continued in prison under an order of the Court for the Relief of Insolvent Debtors; see also 2 Co. Inst. 589. As to escapes suffered by officers, see 2 Hawk. P. C., c. 19; as to escapes suffered by private persons, see *ibid.*, c. 20.

SECT. 5. Offences relating to Arrest, Prosecution etc.

The punishment for this offence is fine and imprisonment (*q*).

Aiding prisoner in custody to attempt to escape.

1014. A person is by statute (*r*) guilty of felony who aids any prisoner to attempt to make his escape from any gaol, or from the custody of any constable or other officer or person who then has lawful charge of him in order to take him to gaol under a warrant of commitment for treason or felony.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*s*).

Aiding prisoner in escaping.

1015. Any person is by statute (*t*) guilty of felony who aids any prisoner in escaping or attempting to escape from any prison, or who, with intent to facilitate the escape of a prisoner, conveys or causes to be conveyed into a prison any mask, dress, or other disguise or any letter, article, or thing (*a*).

The punishment for such offence is imprisonment with or without hard labour for not more than two years (*b*).

Aiding prisoner of war to escape.

1016. Everyone is by statute (*c*) guilty of a felony who aids a prisoner of war to escape.

The punishment for the offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*d*).

Permitting criminal lunatic to escape.

1017. Any officer or servant in an asylum for criminal lunatics is guilty of felony (*e*) who, through wilful neglect or connivance, permits a person confined therein to escape.

The punishment for this offence is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (*f*).

(*q*) The offence is triable at quarter sessions.

(*r*) Prison (Escape) Act, 1742 (16 Geo. 2, c. 31), s. 3. By s. 4 a prosecution must be commenced within one year of the commission of the offence. The Act only applies to a case where an attempt to escape has been made and there has been no actual escape; the Act does not apply if there has been an actual escape (*R.* v. *Tilley* (1795), 2 Leach, 662). It is also a felony under this Act to convey into a gaol any disguise or arms for the purpose of facilitating the escape of prisoners (*ibid.*, s. 2).

(*s*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions.

(*t*) Prison Act, 1865 (28 & 29 Vict. c. 126), ss. 3, 4, 37. The Act does not apply to prisons for convicts under the superintendence of the Director of Convict Prisons or to military or naval prisons (s. 3). As to convict prisons, see p. 508, *ante*; and as to military and naval prisons, see Army Act, 1881 (44 & 45 Vict. c. 58), ss. 20, 22, and Naval Discipline Act (29 & 30 Vict. c. 109), s. 82.

(*a*) *E.g.*, a crowbar (*R* v. *Payne* (1866), L. R. 1 C. C. R. 27).

(*b*) Prison Act, 1865 (28 & 29 Vict. c. 126), s. 37.

(*c*) Prisoners of War (Escape) Act, 1812 (52 Geo. 3, c. 156), s. 1.

(*d*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*e*) Criminal Lunatic Asylums Act, 1860 (23 & 24 Vict. c. 75), s. 12.

(*f*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. If he

(iii.) *Rescue.*

SECT. 5. Offences relating to Arrest, Prosecution etc.

Rescue.

1018. Rescue, or rescous, is the offence of a person who forcibly frees another from a lawful arrest, whether such arrest be by a constable or a private person, or whether the person rescued is in prison or not. It differs in its nature and incidents from breach of prison in that the latter is committed by the prisoner himself and a rescue is by another person.

By the common law if the person rescued is guilty of high treason, and to the knowledge of the rescuer was committed for that crime, the latter is guilty of high treason (*g*). If the offence for which the person rescued is in custody is a felony or a misdemeanour, the rescuer is guilty of a felony or a misdemeanour respectively (*h*).

If the person rescued is in the custody of a private person, the rescuer is only guilty, if he knew that the person rescued was in custody for a criminal offence; but if he is in the custody of an officer or constable, it is otherwise, as he then rescues at his peril (*i*).

If the person arrested is entitled to free himself from an unlawful or irregular arrest, a person rescuing him is not guilty of any offence (*k*).

The person rescued must be tried for his offence before the rescuer is tried for the rescue; if the former is acquitted, the rescuer cannot under any circumstances be convicted of felony, but he may be fined and imprisoned for a misdemeanour (*l*). If the person rescued is convicted of felony, and the offence of the rescuer is therefore felony, the rescuer is liable to penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*m*). If the rescue is committed under such circumstances as to amount to misdemeanour only, the punishment is fine and imprisonment with or without hard labour (*n*).

In murder cases.

1019. Everyone is by statute (*o*) guilty of a felony who rescues or attempts to rescue any person committed for or convicted of

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carelessly allows such a person to escape, he is liable on summary conviction to a fine of £20 (*ibid.*). The offence is triable at quarter sessions. A penalty of £20 is imposed on an officer of a non-criminal lunatic asylum for assisting or conniving at the escape of a patient therefrom (Lunacy Act, 1890 (53 Vict. c. 5), s. 323). As to escape from retreats and reformatories for inebriates, see Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19), s. 26; Inebriates Act, 1898 (61 & 62 Vict. c. 60), ss. 11, 18, and the regulations made under these Acts.

(*g*) 2 Hawk. P. C., c. 21, s. 7. But it was decided in one case that knowledge that the person rescued was confined for treason is not essential (*R.* v. *Bensted* (1640), Cro. Car. 583).

(*h*) 1 Hale, P. C. 606; 2 Hawk. P. C., c. 21, s. 1; *R.* v. *Bensted, supra; R.* v. *Messenger* (1668), Kel. 70, 77. The offence is only triable at quarter sessions, if the felony or misdemeanour for which the person rescued is in custody is triable there.

(*i*) 1 Hale, P. C. 606; 2 Chitty, Criminal Law, 183, n.

(*k*) 2 Hawk. P. C., c. 21, s. 2; see, however, *R.* v. *Almey* (1857), 3 Jur. (N. S.) 750.

(*l*) 1 Hale, P. C. 598, 599.

(*m*) Rescue Act, 1821 (1 & 2 Geo. 4, c. 88), s. 1; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*n*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29.

(*o*) Murder Act, 1751 (25 Geo. 2, c. 37), s. 9.

SECT. 5. Offences relating to Arrest, Prosecution etc.

murder. The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*p*).

(iv.) *Convict at Large.*

Convict at large.

1020. Any offender sentenced to penal servitude or banishment is by statute (*q*) guilty of felony who is afterwards at large within any part of the King's dominions without some lawful excuse before the expiration of the term for which he was sentenced to penal servitude or banishment.

The punishment for this offence is penal servitude for life, or for not less than three years, or imprisonment with or without hard labour for not more than two years (*r*).

Every person rescuing or attempting to rescue such offender from the custody of any gaoler or other person conveying him, or who conveys or causes to be conveyed to him any disguise, instrument for effecting escape, or arms, is punishable as if the offender had been in prison (*s*).

(v.) *Pound-breach.*

Pound-breach.

1021. Goods impounded upon a distress (*t*) either for rent or damage feasant are in the custody of the law; and every person who takes them from the pound against the will of the person impounding them is guilty of the common law misdemeanour known as pound-breach (*u*). The punishment is fine and imprisonment without hard labour (*a*).

Straying animals.

1022. If animals straying are being taken to the pound by a public officer and they are rescued, the rescuer is guilty of a common law misdemeanour, although the cattle have not yet reached the pound, but it is otherwise if they are rescued while being distrained by a private person and before the impounding (*b*).

(*p*) Murder Act, 1751 (25 Geo. 2, c. 37), s. 9; Punishment of Offences Act, 1837 (7 Will. 4 & 1 Vict. c. 91), s. 1; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*q*) Transportation Act, 1824 (5 Geo. 4, c. 84), s. 22; Transportation Act, 1834 (4 & 5 Will. 4, c. 67); Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), ss. 2, 3. The Act will probably not apply to aliens deported under the Aliens Act, 1905 (5 Edw. 7, c. 13), a special punishment being provided for such aliens in case of their return to this country (*ibid.*, ss. 3 (2), 7). See title ALIENS, Vol. I., p. 323.

(*r*) Transportation Act, 1824 (5 Geo. 4, c. 84), s. 22. The offence is not triable at quarter sessions.

(*s*) *Ibid.*

(*t*) As to what amounts to an impounding, see title DISTRESS.

(*u*) Co. Litt. 47 b; 2 Chitty, Criminal Law, 201—207; 2 Hawk. P. C., c. 10, s. 56; and see the preamble to the Pound-breach Act, 1843 (6 & 7 Vict. c. 30). *Quære* whether an indictment lies in such a case, if a man retakes without force his own goods which have been unlawfully seized (*R.* v. *Walshe* (1876), 10 I. R. C. L. 511, and see *R.* v. *Knight* (1908), 1 Cr. App. Rep. 186); in other cases the mere act of taking goods out of the custody of the law is, it seems, indictable, whether force is or is not used (*R.* v. *Butterfield* (1892), 17 Cox, C. C. 598; *R.* v. *Nicholson* (1901), 65 J. P. 298). The Pound-breach Act, 1843 (6 & 7 Vict. c. 30), provides a punishment which can be awarded on summary conviction.

(*a*) The offence is triable at quarter sessions.

(*b*) *R.* v. *Bradshaw* (1835), 7 C. & P. 233; and see title ANIMALS, Vol. I., p. 385.

1023. Rescuing goods lawfully distrained for rates is a common law misdemeanour (*c*), upon the general principle that it is a criminal act to rescue goods which are in the legal custody of officers of the law, although there may be no breach of the peace, and although the goods may have been stored in an improper place (*d*).

SECT. 6.—*Offences affecting the Property and Prerogative of the Crown.*

SUB-SECT. 1.—*Misapplication of Marks of Public Departments.*

Misapplication of Government marks.

1024. Certain marks have been exclusively appropriated by statute to denote His Majesty's property in public stores (*e*). A person is guilty of a misdemeanour (*f*) who without lawful authority applies any of these marks to stores. The punishment for this offence is imprisonment with or without hard labour for not more than two years (*g*).

Obliteration of marks.

1025. Everyone is guilty of a felony (*h*) who takes out, destroys, or obliterates, wholly or in part, any such mark or any mark whatsoever denoting the property of His Majesty in any stores with intent to conceal the King's property in them. The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*i*).

(*c*) *R.* v. *Brenan* (1854), 6 Cox, C. C. 381; *R.* v. *Higgins* (1851), 2 I. C. L. R. 213; and see title DISTRESS. These offences are triable at quarter sessions.

(*d*) See *R.* v. *Beauchamp* (1827), 5 L. J. (o. s.) (M. C.) 66. The rescue of goods seized by the sheriff under an execution is a misdemeanour of a similar kind. As to resistance to sheriff, see Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 8 (2).

(*e*) For the marks appropriated for use generally upon stores under the control of the Admiralty or any public department or office, or of any person in the King's service, see Public Stores Act, 1875 (38 & 39 Vict. c. 25), Sched. I. For the marks applied to the stores used for the purposes of Greenwich Hospital, see Greenwich Hospital Act, 1865 (28 & 29 Vict. c. 89), s. 45; Public Stores Act, 1875 (38 & 39 Vict. c. 25), s. 17.

(*f*) Public Stores Act, 1875 (38 & 39 Vict. c. 25), s. 4.

(*g*) *Ibid.* The offence is triable at quarter sessions.

(*h*) *Ibid.*, s. 5. As to obliterating the marks on regimental necessaries, see s. 13, and Army Act, 1881 (44 & 45 Vict. c. 58), s. 156. The Public Stores Act, 1875 (38 & 39 Vict. c. 25), by s. 12 incorporates the following sections of the Larceny Act, 1861 (24 & 25 Vict. c. 96):—Ss. 98, 99 (punishment of accessories), s. 100 (restitution of goods upon conviction), s. 103 (apprehension without warrant; search warrant; seizure of person offering for sale or in pawn), ss. 107—112, 120 (as to summary convictions), s. 113 (repealed), s. 115 (offences within jurisdiction of Admiralty), s. 116 (form of indictment for a subsequent offence and proof of previous conviction), s. 117 (power of court in case of misdemeanour in addition to or substitution for other punishment to impose fine and require sureties), s. 118 (repealed), s. 119 (as to solitary confinement, repealed, and whipping, inapplicable), s. 120 (summary proceedings), s. 121 (costs, repealed).

(*i*) Public Stores Act, 1875 (38 & 39 Vict. c. 25), s. 5; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. It is a misdemeanour to have possession of any of His Majesty's stores reasonably suspected of being stolen or unlawfully obtained and not to give to the court a satisfactory account of the manner in which they were come by. The punishment is a fine or two months' imprisonment (Public Stores Act, 1875 (38 & 39 Vict. c. 25), s. 7). This offence

SECT. 6. Offences affecting Property etc. of the Crown.

SUB-SECT 2.—*Coinage Offences* (*k*).

Making counterfeit coin, gold or silver.

1026. Every person is by statute (*l*) guilty of a felony (1) who falsely makes or counterfeits any coin resembling, or apparently intended to resemble or pass for, the King's current gold or silver coin (*m*); or (2) who gilds or silvers or with any wash or materials capable of producing the appearance of gold or of silver or by any means whatsoever washes over or colours any coin whatsoever resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin; or (3) gilds or silvers etc. any piece of silver or copper or of coarse gold or coarse silver or of any metal or mixture of metals, being of a fit size and figure to be coined and with intent that it shall be coined into counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin; or (4) gilds or with any wash or materials capable of producing the colour or appearance of gold or by any means whatsoever washes, cases over, or colours any of the King's current silver coin, or files or in any manner alters such coin with intent to make it resemble or pass for any of the King's current gold coin; or (5) gilds or silvers etc. any of the King's current copper coin with intent to make it resemble or pass for any of the King's current gold or silver coin (*n*).

The punishment for any such offence is penal servitude for life, or for not less than three years, or imprisonment with or without hard labour for not more than two years (*o*).

Counterfeit coin.

1027. A coin which has been made or altered so as to be other than it ought to be, or made to resemble that which it is not, is a counterfeit coin (*p*). It is a question of fact for the jury whether

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may be punished on summary conviction, but the offender may be indicted, provided he is not punished twice for the same offence (*ibid.*). The offence is triable at quarter sessions.

(*k*) See title CONSTITUTIONAL LAW, Vol. VI., p. 461.

(*l*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), ss. 2, 3. To counterfeit the King's coin and to import false money from abroad resembling English money was treason by 25 Edw. 3, stat. 5, c. 2; but this enactment, so far as counterfeiting was concerned, was only declaratory of the pre-existing law (Bract., bk. 3, ff. 118 b, 119 b). Various enactments followed which were amended and consolidated by stat. (1832) 2 & 3 Will. 4, c. 34, which repealed that part of 25 Edw. 3, stat. 5, c. 2, which related to false money, coining thus ceasing to be treason. The law on the subject is now to be found entirely in the Coinage Offences Act, 1861 (24 & 25 Vict. c. 99). In that Act "the King's current gold or silver coin" and "the King's copper coin" include respectively any gold or silver or copper (or bronze) coin coined in any of His Majesty's mints, or lawfully current by proclamation or otherwise in any part of the King's dominions, and "the King's current coin" has a similar meaning (s. 1). False or counterfeit coin "resembling or apparently intended to resemble or pass for any of the King's current gold or silver coin" includes any of the current coin which has been gilt, silvered, washed, coloured, or cased over or in any manner altered to resemble or pass for any of the King's current coin of a higher denomination, see *R.* v. *Hermann* (1879), 4 Q. B. D. 284, C. C. R.

(*m*) Coinage Offences Act, 1861, *supra*, s. 2.

(*n*) *Ibid.*, s. 3.

(*o*) *Ibid.*, ss. 2, 3. The offence is not triable at quarter sessions.

(*p*) *R.* v. *Hermann*, *supra*, at p. 288, C. C. R., where a genuine sovereign which had been fraudulently filed at the edges so as to reduce the weight by one twenty-fourth, a new milling having then been added, was held to be a

the counterfeit so nearly resembles any current coin as to be intended to resemble or pass for it (*q*).

The offence of counterfeiting consists in the making or altering of the coin; it is not necessary that there should have been any attempt to utter it (*a*). Any credible witness may prove that the coin in question is counterfeit (*b*).

Lightening etc. the King's gold or silver coin.

1028. It is by statute (*c*) a felony to impair, diminish, or lighten any of the King's current gold or silver coin with intent that the coin so impaired etc. may pass as current coin. The punishment is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*d*).

Unlawful possession of filings etc. of gold etc.

1029. Everyone is by statute (*e*) guilty of felony who unlawfully has in his custody or possession (*f*) any filings, clipping, or gold or silver bullion, or any gold or silver in dust, solution, or otherwise, which has been produced or obtained by impairing, diminishing or lightening the King's current gold or silver coin knowing it to have been so produced or obtained. The punishment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*g*).

Buying etc. counterfeit gold or silver coin.

1030. Everyone is by statute (*h*) guilty of felony who without lawful authority or excuse (*i*) buys, receives, pays, or puts off any false or counterfeit coin resembling or apparently intended to resemble or pass for any of the King's current gold or silver coin at a lower rate or value than the same imports or was apparently intended to import (*j*). In an indictment for this offence it is enough to allege that the accused did buy etc. the false or counterfeit coin

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false and counterfeit coin. With regard to colouring coins to resemble genuine coins or coins of a higher denomination see *R.* v. *Lavey* (1776), 1 Leach, 153; *R.* v. *Case* (1795), 1 Leach, 154, n.; *R.* v. *Turner* (1838), 2 Mood. C. C. 42 (gilding sixpences), all decided on an earlier but similar statute.

(*q*) *R.* v. *Wilson* (1783), 1 Leach, 285; *R.* v. *Welsh* (1785), *ibid.* 364; 1 East, P. C. 164, where the prisoners were held to have been rightly convicted of making pieces of metal apparently resembling a shilling in size and colour, but bearing no impression whatever; and see *R.* v. *Byrne* (1852), 6 Cox, C. C. 475; *R.* v. *Robinson* (1865), 10 Cox, C. C. 107, C. C. R.

(*a*) 1 Hale, P. C. 228; nor, apparently, an intention at any time to utter it.

(*b*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 29.

(*c*) *Ibid.*, s. 4.

(*d*) *Ibid.* The offence is triable at quarter sessions.

(*e*) *Ibid.*, s. 5.

(*f*) A person has any matter mentioned in the Act in his custody or possession not only if he has it in his personal custody or possession, but also if he knowingly and wilfully has it in the actual custody or possession of any other person, and also knowingly and wilfully has it in any dwelling-house or other building, lodging, apartment, field, or other place, open or enclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or benefit or for that of any other person (*ibid.* s. 1). See *R.* v. *Skerrit* (1826), 2 C. & P. 427; *R.* v. *Gerrish* (1839), 2 Mood. & R. 219; *R.* v. *Owen* (1889), 53 J. P. 822; *R.* v. *Weeks* (1861), Le. & Ca. 18.

(*g*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 5. The offence is triable at quarter sessions.

(*h*) *Ibid.*, s. 6.

(*i*) The proof of the authority or excuse lies on the party accused (*ibid.*).

(*j*) *Ibid.*

SECT. 6. Offences affecting Property etc. of the Crown.

at and for a lower rate and value than the same imports etc., without alleging for what rate etc. it was bought etc. (*k*).

Importing counterfeit gold or silver coin.

1031. Everyone is by statute (*l*) guilty of felony who without lawful authority or excuse imports or receives into the United Kingdom from beyond the seas any false or counterfeit coin resembling, or apparently intended to resemble, the King's current gold or silver coin knowing it to be false or counterfeit (*m*).

The punishment for this offence is penal servitude for life, or for not less than three years, or imprisonment with or without hard labour for not more than two years (*n*).

Exporting counterfeit gold or silver coin.

1032. Every person is by statute (*o*) guilty of a misdemeanour who without lawful authority or excuse exports or puts on board any ship etc. for the purpose of being exported from the United Kingdom any false or counterfeit coin resembling, or apparently intended to resemble, any of the King's current coin, with knowledge that it is counterfeit.

The punishment for this offence is imprisonment with or without hard labour for not more than two years (*a*).

Uttering counterfeit gold or silver coin.

1033. It is a statutory misdemeanour (*b*) to tender, utter, or put off any false or counterfeit coin resembling, or apparently intended to resemble, the King's current gold or silver coin knowing the same to be false or counterfeit.

The punishment is imprisonment for not more than one year with or without hard labour (*c*).

1034. Everyone is by statute (*d*) guilty of a misdemeanour who so utters such coin, and who has at the time of such uttering in his custody or possession any other piece of false or counterfeit gold or silver coin, or who on the day of such uttering or within ten days next ensuing tenders, utters, or puts off any other false or counterfeit gold or silver coin.

The punishment for this offence is imprisonment for not more than two years with or without hard labour (*e*).

Possession of three or more counterfeit coins.

1035. A person is by statute (*f*) guilty of a misdemeanour who has in his custody or possession three or more pieces of false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin knowing the same to be false or counterfeit and with intent to utter or put off the same or any of them. The punishment is penal servitude for not

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(*k*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 7.
(*l*) *Ibid.*
(*m*) The proof of the authority or excuse lies on the party accused (*ibid.*).
(*n*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 7; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.
(*o*) *Ibid.*, s. 8. As to importing counterfeit coin into the British colonies, see Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 150, 151.
(*a*) *Ibid.* The offence is triable at quarter sessions.
(*b*) *Ibid.*, s. 9.
(*c*) *Ibid.* The offence is triable at quarter sessions.
(*d*) *Ibid.*, s. 10.
(*e*) *Ibid.* The offence is triable at quarter sessions.
(*f*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 11.

more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (*g*).

1036. A person is by statute (*h*) guilty of felony who, having been convicted of any of the three last-mentioned misdemeanours or of any felony under any Act relating to the coin of the realm, afterwards commits any of such misdemeanours. The punishment is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*i*).

Uttering as current coin coin which is not the King's current coin.

1037. A person is by statute (*j*) guilty of a misdemeanour who tenders or utters as and for any of the King's current gold or silver coin and with intent to defraud any coin not being such current gold or silver coin, or any medal or piece of metal resembling in size, figure, and colour the current coin for which it is tendered or uttered, such coin, medal, or piece of metal being of less value than the current coin as and for which it is tendered.

The punishment is imprisonment for not more than one year with or without hard labour (*k*).

Uttering counterfeit coin.

1038. A person who knowingly offers counterfeit coin for the purpose of putting it in circulation is guilty of uttering, whether it is accepted or not by the person to whom it is offered (*l*).

Uttering counterfeit coin being a misdemeanour, two or more persons may be convicted of a joint uttering, although the actual passing of the coin may be done by one of them in the absence of the others, provided they were all engaged in the common purpose of uttering counterfeit coin and the coin in question was uttered in execution of the common purpose (*m*).

(*g*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 11; Penal Servitude Act, 1891 (54 & 55 Vict. c. 49), s. 1. The offence is triable at quarter sessions.

(*h*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 12. There is a previous conviction within the meaning of the section, although the prisoner was released upon a recognisance to come up for judgment if called upon (*R.* v. *Blaby*, [1894] 2 Q. B. 170, C. C. R.). If a person is indicted under this section, the previous conviction must be charged in the indictment, but the prisoner is in the first instance arraigned and tried only on the subsequent offence, and the previous conviction cannot be proved, until after he has been convicted of the subsequent offence (*ibid.*, s. 37; *R.* v. *Martin* (1869), L. R. 1 C. C. R. 214). If the jury negative the previous conviction, the indictment fails, as the prisoner cannot upon it be convicted of the misdemeanour of uttering (*R.* v. *Thomas* (1875), L. R. 2 C. C. R. 141).

(*i*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 12. The offence is not triable at quarter sessions.

(*j*) *Ibid.*, s. 13.

(*k*) *Ibid.* The offence is triable at quarter sessions.

(*l*) *R.* v. *Welch* (1851), 4 Cox, C. C. 430, C. C. R. In *R.* v. *Page* (1837), 8 C. & P. 122, Lord ABINGER, C.B., held that the giving away of bad money in charity was not an uttering of it with intent to defraud. The correctness of the ruling in this case was much doubted by the court in *R.* v. —— (1845), 1 Cox, C. C. 250, in which case it was held that a man who knowingly gave a counterfeit sovereign to a woman as a reward for her prostitution was guilty of uttering it. In *R.* v. *Ion* (1852), 2 Den. at p. 484, ALDERSON, B., said that *R.* v. *Page* had been overruled; see also *R.* v. *Shukard* (1811), Russ. & Ry. 200; *R.* v. *Radford* (1844), 1 Den. 59.

(*m*) *R.* v. *Greenwood* (1852), 2 Den. 453, overruling *R.* v. *Else* (1808), Russ. & Ry. 142, *R.* v. *Manners* (1837), 7 C. & P. 801, and other similar cases; see also *R.* v. *Hurse* (1841), 2 Mood. & R. 360.

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To prove that the defendant knew that the coin uttered was false or counterfeit, and to negative accident or mistake, evidence may be given that other counterfeit money was found in his possession, or that either before or after the uttering in question he uttered other base money, whether of the same denomination or not, provided that in the opinion of the judge these utterings were not so remote in point of time as to be wholly disconnected with each other (*n*).

Making counterfeit copper coin.

1039. A person is by statute (*o*) guilty of a felony who (1) falsely makes or counterfeits any coin resembling, or apparently intended to resemble or pass for, any of the King's current copper coin; or (2) buys, sells, receives etc. any false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the King's copper coin at a lower rate than the same imports or was apparently intended to import.

The punishment is penal servitude for not more than seven years nor less than three years, or imprisonment with or without hard labour for not more than two years (*p*).

Uttering counterfeit copper coin.

1040. A person is by statute (*q*) guilty of a misdemeanour who (1) tenders, utters, or puts off any false or counterfeit coin resembling, or apparently intended to resemble or pass for, the King's current copper coin knowing it to be false or counterfeit; or (2) has in his custody or possession three or more pieces of such counterfeit copper coin knowing the same to be false or counterfeit and with intent to utter the same or any of them.

The punishment is imprisonment for not more than one year with or without hard labour (*r*).

Defacing the King's coin.

1041. Everyone is by statute (*s*) guilty of a misdemeanour who defaces any of the King's current gold, silver, or copper coin by stamping any names or words thereon, whether such coin is or is not thereby diminished or lightened.

The punishment is imprisonment for not more than one year with or without hard labour (*t*).

No tender of payment in money made in any gold, silver, or copper coin so defaced by stamping as above mentioned is to be allowed to be a legal tender (*u*).

Making counterfeit foreign gold or silver coin.

1042. It is by statute a felony (*x*) to make or counterfeit any kind of coin not being the King's current gold or silver coin, but

(*n*) *R.* v. *Whiley* (*or Wylie*) (1804), 2 Leach, 983; *R.* v. *Ball* (1808), 1 Camp. 325; *R.* v. *Forster* (1855), Dears. C. C. 456; *R.* v. *Colclough* (1882), 15 Cox, C. C. 92 (C. C. R. (Ir.)); *R.* v. *Fuller* (1816), Russ. & Ry. 308; *R.* v. *Ollis*, [1900] 2 Q. B. 758, 781, 782, C. C. R.

(*o*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 14.

(*p*) *Ibid.*, s. 15.

(*q*) *Ibid.*, s. 15. As to custody or possession, see note (*f*) on p. 515, *ante*.

(*r*) *Ibid.* The offence is triable at quarter sessions.

(*s*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 16.

(*t*) *Ibid.*

(*u*) *Ibid.*, s. 17. A person who tenders, utters, or puts off a coin so defaced is liable on conviction before justices to a penalty of 40*s.*; but no person can proceed for the penalty without the consent of the Attorney-General (*ibid.*).

(*x*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 18; *R.* v. *Roberts* (1855), Dears. C. C. 539.

resembling, or apparently intended to resemble or pass for, any gold or silver coin of any foreign prince, State, or country.

The punishment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*y*).

Importing counterfeit foreign gold or silver coin.

1043. It is by statute (*z*) a felony knowingly to bring any such counterfeit gold or silver foreign coin into the United Kingdom.

The punishment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*a*).

Uttering counterfeit foreign gold or silver coin.

1044. It is by statute (*b*) a misdemeanour to utter any such coin knowing it to be counterfeit.

The punishment is imprisonment for not more than six months with or without hard labour, and for a second offence imprisonment for not more than two years with or without hard labour (*c*).

Everyone is by statute (*d*) guilty of a felony who utters such coin after two previous convictions.

The punishment is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*e*).

Making counterfeit foreign copper coin.

1045. Everyone is by statute (*f*) guilty of a misdemeanour who makes falsely or counterfeits any kind of coin intended to resemble or pass for any copper coin or any other coin made of any metal or mixed metals of less value than the silver coin of any foreign State.

The punishment for the first offence is imprisonment for one year with or without hard labour, and for the second offence penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not less than two years (*g*).

Making etc. or having possession of instruments for counterfeiting gold or silver coin.

1046. Everyone is by statute (*h*) guilty of a felony who knowingly and without lawful authority or excuse, makes, mends, begins or

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(*y*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 18; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions.

(*z*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 19.

(*a*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 19; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions.

(*b*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), ss. 20, 21.

(*c*) *Ibid.* The offence is triable at quarter sessions.

(*d*) *Ibid.*, s. 21.

(*e*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*f*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 22.

(*g*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions. A person who without lawful authority or excuse has in his possession more than five pieces of counterfeit foreign coin forfeits the same on summary conviction, and also forfeits £2 for every such piece of counterfeit coin. Half of this penalty is payable to the informer and the other half to the poor of the parish (Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 23).

(*h*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 24. A galvanic battery is a "machine" within the meaning of this section (*R.* v. *Gover* (1863), 9 Cox, C. C. 282). If a person employs a die-sinker to make for a pretended innocent purpose a die fitted to make shillings and the die-sinker acts innocently and with the knowledge of the authorities of the Mint, the employer may be convicted of making the die (*R.* v. *Bannen* (1844), 2 Mood. C. C. 309). An

SECT. 6. Offences affecting Property etc. of the Crown.

proceeds to make or mend, buys, sells, or has in his custody or possession (*i*) (1) any puncheon, counter puncheon, matrix, stamp, die, pattern or mould, made or impressed with, or which will make or impress, the figure or apparent resemblance of both or either of the sides of any of the King's current gold or silver coin, or of the coin of any foreign State or any part or parts of both or either of such sides; or (2) any edges, edging or other tool, collar, instrument, or engine adapted and intended for marking or milling the edges of any such coin knowing it to be so adapted and intended; or (3) any press for coinage or engine for cutting round blanks out of gold, silver, or other metal, or any other machine, knowing it to have been used or intended to be used for the false making of any such coin.

The punishment for any such offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*j*).

Making etc. instruments for counterfeiting copper coin.

1047. Every person is by statute (*k*) guilty of felony who knowingly without lawful excuse, makes, mends, or has in his custody or possession any instrument, tool, or engine adapted and intended for counterfeiting any of the King's current copper coin.

The punishment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*l*).

Conveying coining tools out of the mint.

1048. Everyone is by statute (*m*) guilty of felony who without lawful authority or excuse knowingly conveys out of any of His Majesty's mints any puncheon, counter puncheon, matrix, stamp, die, pattern, or other tool, instrument, press, or engine used in the coining of coin, or any useful part thereof, or any coin, bullion, or metal or mixture of metals.

The punishment is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*n*).

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indictment under this section (and also for offences against other sections where the words "without lawful authority or excuse" are used) must allege that the act was done without such lawful authority or excuse, although in each of these sections the onus of proving the lawful authority or excuse is thrown upon the prisoner (*R.* v. *Harvey* (1871), L. R. 1 C. C. R. 284). The intent with which the accused bought or sold or had in his possession the particular instrument of coining is immaterial, if he knew that it was one which was adapted and intended to be used for making counterfeit coin (*ibid.*; *R.* v. *Bell* (1753), 1 East, P. C. 169; and see *Dickins* v. *Gill*, [1896] 2 Q. B. 310).

(*i*) As to possession, see note (*f*) on p. 515, *ante*.

(*j*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 24. This offence is not triable at quarter sessions.

(*k*) *Ibid.*, s. 14.

(*l*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions.

(*m*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 25. This offence is not triable at quarter sessions.

(*n*) *Ibid.* The following provisions of the Coinage Offences Act, 1861, relate to the discovery of counterfeit coin and coining tools and the destruction of counterfeit or diminished coin. If anyone finds in any place or in the custody of any person having the same without lawful authority or excuse any false or counterfeit coin, whether English or foreign, or any instrument for making the

SECT. 6. Offences affecting Property etc. of the Crown.

1049. Every offence of falsely making or counterfeiting any coin or of buying, selling, receiving, paying, tendering, uttering or putting off or of offering to buy, sell, receive, pay, utter or put off any false or counterfeit coin against the provisions of the Act is to be deemed to be complete, although the coin so made etc. is not in a fit state to be uttered or the counterfeiting is not finished (*o*).

SUB-SECT. 3.—*Concealing Treasure Trove.*

Treasure trove.

1050. Treasure trove is gold or silver, in coin, plate, or bullion, whereof no person can now prove the property, hidden in ancient time and discovered recently; it belongs to the King or to some lord or other person by the King's grant or prescription (*p*), the *primâ facie* presumption always being that it belongs to the King (*q*).

Concealing treasure trove.

Every person is guilty of a common law misdemeanour (*r*) who finds treasure trove and conceals it.

The punishment is a fine and imprisonment without hard labour (*s*).

Coroner's inquisition in cases of treasure trove.

It is a part of the duty of the coroner to hold an inquisition to inquire who were the finders of treasure trove and who is suspected of concealing it (*t*), but the holding of such an inquisition is not necessary before indicting a person for concealment of the treasure (*u*).

The offence consists in intentional concealment; it is not

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same, or any gold or silver, whether in dust, solution, or otherwise obtained by diminishing the King's current gold or silver coin, it is lawful for him, and he is required, to seize it and take it before a justice of the peace; a justice of the peace may also issue a search warrant for the discovery of false and counterfeit coin and instruments of coining (*ibid.*, s. 27; see also s. 31, which provides for the apprehension by any person of offenders found committing any indictable offence against the Act). Where any coin is tendered as the King's current gold or silver coin to any person who suspects it to be diminished otherwise than by reasonable wearing, or to be counterfeit, he may cut, break, bend, or deface such coin. If it appears to be diminished or counterfeit, the person tendering it must bear the loss. If it is of due weight and appears to be lawful coin, the person defacing it must receive it as such. In case of dispute as to whether the coin is diminished or counterfeit this question is to be determined in a summary way by a justice of the peace. Tellers at the Exchequer and the receivers-general of every branch of the Revenue are required to break or deface every piece of counterfeit or unlawfully diminished gold or silver coin tendered to them in payment (*ibid.*, s. 26). As to apprehension of offenders, see p. 300, note (*d*), *ante;* and as to accessories, see p. 253, *ante.*

(*o*) Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 30. See further, as to venue, *ibid.*, s. 28, and pp. 256, 258, 284, 286, *ante;* as to offences committed within the jurisdiction of the Admiralty, *ibid.*, s. 36; proof of previous convictions, *ibid.*, s. 37; fining offenders and binding them to keep the peace, *ibid.*, s. 38.

(*p*) 3 Co. Inst. 132; Termes de la Ley, 565; Chitty, Prerogative of the Crown, 152; and title CONSTITUTIONAL LAW, Vol. VII., p. 212.

(*q*) *A.-G.* v. *Moore*, [1893] 1 Ch. 676, 683.

(*r*) 3 Co. Inst. 132.

(*s*) The offence is, it seems, an offence against the prerogative of the King and therefore not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*t*) Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 36, repealing stat. de Coronatoris, 4 Edw. 1, stat. 2, s. 1; see title CORONER, Vol. VIII., p. 247.

(*u*) *R.* v. *Toole* (1867), 11 Cox, C. C. 75; C. C. R. (Ir.).

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necessary to allege in the indictment that the defendant acted fraudulently, although the word "fraudulent" is commonly used in some old authorities (*v*).

SUB-SECT. 4.—*Smuggling.*

Smuggling.

1051. Smuggling consists in bringing on shore, or in carrying from the shore, dutiable goods, wares, or merchandise for which duty has not been paid, or goods the importation of which is prohibited (*x*).

Making signals to smuggling vessels.

1052. Every person is by statute (*a*) guilty of a misdemeanour who after sunset and before sunrise between the 21st September and the 1st April, or after 8 p.m. and before 6 a.m. at any other time of the year, makes or assists in making any signal from ship, boat, or shore for the purpose of giving notice to any person on board any smuggling ship or boat.

The punishment is the forfeiture of £100 or imprisonment for one year with or without hard labour (*b*).

Shooting at ship etc. engaged in the prevention of smuggling.

1053. Every person is by statute (*c*) guilty of a felony who maliciously shoots at any vessel or boat belonging to His Majesty's navy or in the service of the revenue, or maliciously shoots at, maims, or wounds any officer of the army or navy, or any mariner or coast-guard employed in the prevention of smuggling and on full pay, or any officer of customs or excise, or any person acting in his aid, in the execution of his duty.

The punishment is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (*d*).

Procuring persons to assemble for smuggling.

1054. A person is by statute (*e*) guilty of a misdemeanour who procures any person or persons to assemble for landing, carrying or

(*v*) *R.* v. *Thomas* (1863), Le. & Ca. 313.

(*x*) 1 Hawk. P. C., c. 30, s. 1. The penalty for smuggling is that the goods smuggled (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 177), and the ship, boat, carriage, or horse used for their conveyance (*ibid.*, s. 202), are forfeited to the Crown, and the offender is also liable to forfeit either treble the value of the goods, including the duty thereon, or £100, at the election of the Commissioners of Customs (*ibid.*, s. 186). The forfeitures are recoverable by action, *ibid.*, s. 218.

(*a*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 190; see also ss. 191, 192.

(*b*) *Ibid.*

(*c*) *Ibid.*, s. 193; see also Customs and Inland Revenue Act, 1881 (44 Vict. c. 12), s. 12, which imposes a penalty of £100 for rescuing any person apprehended for any offence against the Customs Act, 1876, which is punishable by fine or imprisonment, or for preventing the apprehension of such a person, or for assaulting or obstructing any officer of customs while acting in the execution of his duty. The penalty is, it seems, recoverable by action.

(*d*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 193; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. Under the Customs Consolidation Act, 1876, a sentence of imprisonment for three years without hard labour could be given. *Quære* whether a sentence of three years' imprisonment could now be inflicted for this offence (Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1). *Quære* also whether this or the last-mentioned offence is triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*e*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 189; see *ibid.*, s. 188, which is repealed by the Customs and Inland Revenue Act, 1879 (42 & 43

concealing any goods which are prohibited from being imported, or the duties for which have not been paid or secured.

The punishment is imprisonment with or without hard labour for twelve months; if any person engaged in landing etc. such goods is armed with firearms or other offensive weapons, or whether so armed or not is disguised in any way, or, being so armed or disguised, is found with any goods liable to forfeiture under the Customs Acts within five miles of the sea coast or of a tidal river, he is liable to imprisonment with or without hard labour for not more than three years (*f*).

Large clubs or sticks are "offensive weapons." The expression includes anything that is not in common use for any other purpose but a weapon; but a common whip is not such a weapon, nor, probably, is a hatchet which is caught up accidentally during the heat of an affray (*g*).

Limitation of time for prosecution.

1055. All indictments and informations for any offence against the Customs Acts in any court or before any justice must be brought or exhibited within three years next after the date of the offence committed (*h*).

SECT. 7.—*Offences relating to Elections.*

Elections.

1056. There are various criminal offences in relation to bribery at elections, undue influence, evasion of the Ballot Act, personation, and neglect or delay in the issue of writs for elections; these offences are treated of in another part of this work (*i*).

SECT. 8.—*Offences on the High Seas.*

SUB-SECT. 1.—*Piracy.*

Piracy *jure gentium*.

1057. Piracy *jure gentium* (*j*) consists in destroying, attacking, or taking a ship, or taking any part of its tackle or cargo, from the owners on the high seas, or within the jurisdiction of the Admiralty, by acts of violence or by putting in fear, and by a body of men acting without the authorisation of any State or politically organised society (*k*).

Vict. c. 21), s. 14, and schedule, but is replaced by s. 10 of the last-mentioned Act, which is to the same effect (see Stephen, Digest of the Criminal Law, 6th ed., 58, n.).

(*f*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 189.

(*g*) *R.* v. *Fletcher* (1742), 1 Leach, 23; *R.* v. *Hutchinson* (1784), 1 Leach, 339, 342, n.; *R.* v. *Noakes* (1832), 5 C. & P. 326.

(*h*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 257. But probably an indictment for a conspiracy to infringe any of the provisions of the Acts could be preferred after the expiration of three years (see *R.* v. *Thompson* (1851), 16 Q. B. 832).

(*i*) See title ELECTIONS.

(*j*) Piracy was not, properly speaking, felony at common law, and a pardon of all felonies did not include piracy (1 Hawk. P. C., c. 20, s. 12; 3 Co. Inst. 111; *R.* v. *Morphes* (1696), 1 Salk. 85). It was, however, known as felony by civil law, and was tried according to that law by the admiral or his deputy prior to the Offences at Sea Act, 1536 (28 Hen. 8, c. 15); see the preamble to that statute; Molloy, De Jure Maritimo, bk. 1, c. 4, s. 24; Co. Litt. 391 a.

(*k*) In *A.-G. for Hong Kong* v. *Kwok-a-Sing* (1873), L. R. 5 P. C. 179, 199, the Privy Council approved as a correct exposition of the law as to what constitutes piracy *jure gentium* the following passage from the charge to the

SECT. 8. Offences on the High Seas.

Jurisdiction in piracy.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*l*).

1058. The King's courts have jurisdiction to try all cases of piracy *jure gentium* in whatever part of the seas and upon whosesoever property it may be committed, and whether the accused are British subjects or the subjects of any foreign State with whom the King is at amity (*m*).

If the act of depredation was committed, even without the King's commission, upon a subject of a State at enmity with the King, it does not amount to piracy.

It is piracy for a man who holds the King's commission to despoil those with whom his commission does not authorise him to fight, if they are in amity with the King (*n*).

The place where the alleged piracy was committed must be within the jurisdiction of the Admiralty (*o*).

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grand jury in *R.* v. *Dawson* (1696), 13 State Tr. 454:—"piracy is only a sea term for robbery, piracy being a robbery within the jurisdiction of the Admiralty. . . . If the mariner of any ship shall violently dispossess the master, and afterwards carry away the ship itself or any of the goods with a felonious intention in any place where the Lord Admiral hath jurisdiction, this is robbery and piracy." But see Stephen, History of the Criminal Law, Vol. II., 28. Several definitions of this offence by jurists of various nationalties are collected in Hall on International Law, 5th ed., p. 260, n. The words "or politically organised society" have been added to the definition in the text to meet the case of a body of persons acting in what they suppose to be the public interest of their country, for public ends, and not with a view to satisfy (at any rate directly) their own greed or desire for revenge. It is submitted that persons so acting, and committing only such acts as would be regular acts of war if done under the authority of a recognised State, would not at the present day be held guilty of piracy. There would in such a case be, properly speaking, no *animus furandi*, which has been said to be a necessary ingredient of the offence when ship or cargo is taken; and the acts of hostility would be directed against the subjects of one particular State, and not by the undiscriminating desire of plunder which characterises the *hostis humani generis*. See Hall on International Law, pp. 257 *et seq.*, where the matter is fully discussed; also *Re Tivnan* (1864), 5 B. & S. 645 (also reported as *Re Ternan* (1864), 9 Cox, C. C. 522); *The Magellan Pirates* (1853), 1 Ecc. & Ad. 81, 83; *Bolivia Republic* v. *Indemnity Mutual Marine Assurance Co.*, [1909] 1 K. B. 785. Cases of this kind arose in the United States during the Civil War, but were dealt with under special Acts of Congress (see Bishop, Criminal Law, Vol. II., p. 618, n.).

(*l*) Piracy Act, 1837 (7 Will. 4 & 1 Vict. c. 88), s. 3; Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), s. 2); Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1; but see p. 526, *post*. No kind of piracy is triable at quarter sessions.

(*m*) 1 Hawk. P. C., c. 20, s. 1; *R.* v. *Dawson* (1696), 13 State Tr. 451, 455. But an act which is declared piracy by statute and does not amount to piracy *jure gentium* will only be punishable in an English court, if committed by a British subject, unless it was committed within the King's dominions or within the Admiralty jurisdiction.

(*n*) 4 Co. Inst. 154; charge of Sir L. Jenkins, Life of Sir L. Jenkins, Vol. I., p. xciv.; *Re Tivnan, supra*. As to depredations by a British subject acting under a commission from a foreign State, see p. 525, *post*.

(*o*) 3 Co. Inst. 113; 1 Hawk. P. C., c. 20, s. 15; *R.* v. *Allen* (1837), 1 Mood. C. C. 494; *R.* v. *Anderson* (1868), L. R. 1 C. C. R. 161, 169; *R.* v. *Carr* (1882), 10 Q. B. D. 76, C. C. R., and see p. 273, *ante*, and title ADMIRALTY, Vol. I., p. 59. The ordinary rule that an indictment will not lie in an English court for an offence committed at sea beyond the limits of the territorial waters (Territorial

All offences committed on the high seas and other places within the jurisdiction of the Admiralty may now be tried by justices of assize or commissioners of oyer and terminer or gaol delivery in any county where a person committed for such an offence is imprisoned (*p*), or by the Central Criminal Court (*q*).

Piracy under colour of commission from a foreign State.

1059. If a natural-born subject of the King or a denizen of this kingdom commits any piracy or robbery or any act of hostility against the King's subjects upon the sea under colour of any commission from any foreign prince or State, or pretence of authority from any person whatever, either during peace or war, he is by statute (*r*) deemed to be a pirate, felon, and robber.

Master or seaman turning pirate etc.

1060. A master or seaman is by statute (*s*) deemed to be a pirate, felon, and robber, punishable as a pirate, (1) who within Admiralty jurisdiction betrays his trust and turns pirate, enemy, or rebel and piratically runs away with his ship or any boat, ordnance, ammunition or goods, or yields them up voluntarily to a pirate; or (2) who brings seducing messages from any pirate, enemy, or rebel; or (3) who consults or combines with or attempts to corrupt any master, officer or mariner to yield up or run away with any ship or goods or turn pirate; or (4) who lays violent hands on his commander to hinder him from fighting in defence of his ship, or confines him, or endeavours to make a revolt in the ship.

Trading with pirates etc.

1061. A master of a ship, or any other person who trades with any pirate, or furnishes him with ammunition, provisions or stores, or who fits out a ship for so trading, or who consults, combines, or corresponds with a pirate knowing him to be such, is by statute deemed to be guilty of piracy, felony, and robbery (*t*).

Forcibly boarding ship.

1062. Any person belonging to any ship is by statute (*u*) deemed

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Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), s. 2) on board a foreign vessel by a foreigner (*R.* v. *Keyn* (1876), 2 Ex. D. 63, C. C. R.; *R.* v. *Anderson* (1868), L. R. 1 C. C. R. 161, 169) does not apply to piracy.

(*p*) Admiralty Offences Act, 1844 (7 & 8 Vict. c. 2), ss. 1, 3, 4; and see Offences at Sea Act, 1536 (28 Hen. 8, c. 15), ss. 1, 2.

(*q*) Central Criminal Court Act, 1834 (4 & 5 Will. 4, c. 36), s. 22. As to the trial in the colonies of pirates and others who have committed crimes on the high seas, see 11 Will. 3, c. 7; Offences at Sea Act, 1806 (46 Geo. 3, c. 54); Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict. c. 96); Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37); and the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 687.

(*r*) 11 Will. 3, c. 7, s. 7 (made perpetual by 6 Geo. 1, c. 19).

(*s*) Stat. (1698) 11 Will. 3, c. 7, s. 8. As to who are accessories, see ss. 9, 10. Upon a charge of confining the master it is not necessary to show that force was actually used. A constructive confinement, as by so threatening the master as to render him not a free agent to go where he liked on board the ship, is a confinement within the meaning of the section (*R.* v. *Jones* (1870), 11 Cox, C. C. 393, *per* BOVILL, C.J., at p. 397).

(*t*) Piracy Act, 1721 (8 Geo. 1, c. 24), s. 1.

(*u*) *Ibid.*

SECT. 8. Offences on the High Seas.

to be and is punishable as a pirate who, upon meeting a merchant ship on the high seas or in any port, haven, or creek, forcibly boards or enters her, and who, though he does not seize or carry off such vessel, throws overboard or destroys any part of the goods or merchandise belonging to her.

Punishment.

1063. The punishment for a statutory piracy is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*a*). But whoever with intent to commit, or at the time of or immediately before or after committing, the crime of piracy in respect of any ship, assaults with intent to murder any person on board the ship, or who stabs, cuts, or wounds any such person, or unlawfully does any act whereby the life of such person may be endangered, must be sentenced to death (*b*).

SUB-SECT. 2.—*Slave Trade.*

Carrying off persons as slaves etc.

1064. Any British subject or anyone residing within the King's dominions is by statute (*c*) to be deemed guilty of piracy who upon the high seas or in any haven, river, creek, or place within Admiralty jurisdiction knowingly and wilfully (1) carries away any person as a slave, or for the purpose of such person being imported as a slave, into any place whatsoever, or for the purpose of such person being sold, used, or dealt with as a slave; or (2) on the high seas or within the King's dominions ships, receives, detains, or confines on board ship any person for any such purpose.

The punishment for such offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*d*).

Slave-dealing etc.

1065. Every person is by statute (*e*) guilty of a felony (1) who deals or trades in slaves or persons intended to be dealt with as slaves; (2) imports or contracts for importing into any place slaves or other persons in order that they may be dealt with as slaves; (3) ships, receives, detains, or confines on board any such persons for the purpose of their being dealt with as slaves; (4) fits out or navigates ships for any of the above purposes; (5) lends or

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(*a*) Piracy Act, 1837 (7 Will. 4 & 1 Vict. c. 88), s. 3; Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), s. 2; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*b*) Piracy Act, 1837 (7 Will. 4 & 1 Vict. c. 88), s. 2. As to the condemnation of property captured from pirates and the restitution to owners, see Piracy Act, 1850 (13 & 14 Vict. c. 26), s. 5, and title ADMIRALTY, Vol. I., p. 76.

(*c*) Slave Trade Act, 1824 (5 Geo. 4, c. 113), s. 9. As to the jurisdiction of the Admiralty Division of the High Court in regard to the condemnation of vessels etc. seized under the Slave Trade Acts, see title ADMIRALTY, Vol. I., p. 78.

(*d*) *Ibid.;* Punishment of Offences Act, 1837 (7 Will. 4 & 1 Vict. c. 91), s. 1; Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), s. 2; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*e*) Slave Trade Act, 1824 (5 Geo. 4, c. 113), s. 10. Offences under this section are not, it seems, excluded from the jurisdiction of quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

becomes security for money or goods to be employed for such purposes; or (6) knowingly and wilfully becomes guarantee for agents employed with the same object, or engages in any such adventure as partner, agent, or otherwise; (7) ships money or goods to be employed for such purposes; (8) acts as master, mate, surgeon or supercargo of any ship so employed; (9) insures any slaves or any property so employed; or (10) forges or utters any certificate, sentence, or receipt required by the Slave Trade Act, 1824 (*f*).

The punishment for any such offence is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*g*).

Acts committed outside the King's dominions.

1066. A British subject is equally guilty of any of the above offences, whether the acts alleged were committed within or without the King's dominions (*h*). But there is nothing in the Slave Trade Acts to prohibit a contract by a British subject for the sale of slaves lawfully held by him in a foreign country where the possession and sale of slaves is lawful (*i*).

SUB-SECT. 3.—*Decoying Pacific Islanders.*

Kidnapping Act, 1872.

1067. Any British subject is by statute (*j*) guilty of felony (1) who decoys a native of an island in the Pacific Ocean (not being in His Majesty's dominions nor within the jurisdiction of any civilised power) for the purpose of importing or removing him into any other island or place, or carries such native away or confines or detains him for such purpose without his consent; or (2) who for that purpose ships or detains such native without his consent; or (3) who contracts for such shipping etc.; or (4) who fits out, navigates, lets, employs, commands, or serves in or is on board of any vessel with intent to commit any such offence; or (5) who puts money or goods on board any vessel with the knowledge that such money and goods will be so employed.

(*f*) 9 Geo. 4, c. 113, s. 10.

(*g*) *Ibid.*, s. 10; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. There are also pecuniary forfeitures provided for the above offences by the Slave Trade Act, 1824 (5 Geo. 4, c. 113), ss. 2—8, as to the recovery of which see s. 12, and the Slave Trade Act, 1873 (36 & 37 Vict. c. 88), s. 25. The last-mentioned Act contains provisions for the seizure by officers of the Royal Navy of vessels equipped for trading in slaves and for their condemnation by courts having jurisdiction in Admiralty. As to the place of trial of all offences against either of the above Acts, see the Slave Trade Act, 1873 (36 & 37 Vict. c. 88), ss. 24, 26, p. 285, *ante;* as to the form of the indictment, see *R.* v. *Jennings* (1844), 1 Cox, C. C. 115.

(*h*) *R.* v. *Zulueta* (1843), 1 Car. & Kir. 215.

(*i*) *Santos* v. *Illidge* (1860), 8 C. B. (N. S.) 861, Ex. Ch. See further, as to such contracts, *Mittelholzer* v. *Fullarton* (1842), 6 Q. B. 989; and as to the circumstances under which ships supposed to be engaged in the slave trade may be seized, see *Madrazo* v. *Willes* (1820), 3 B. & Ald. 353; *Buron* v. *Denman* (1848), 2 Exch. 167; *Casanova* v. *R.*, *The Ricardo Schmidt* (1866), L. R. 1 P. C. 268; *The Laura* (1865), 13 L. T. 133, P. C.; *Hocquard* v. *R.*, *The Newport* (1858), 6 W. R. 310; *R.* v. *Casaca* (1880), 5 App. Cas. 548, P. C.

(*j*) Kidnapping Act, 1872 (35 & 36 Vict. c. 19), s. 9.

SECT. 8. Offences on the High Seas.

Anyone charged with such an offence may be tried in any supreme court of justice in any of the Australian colonies and sentenced to the highest punishment, other than capital punishment, awarded for any felony by the law of the colony in which he is tried, and any person who aids and abets such an offender may be tried and punished in the same way (*k*).

SECT. 9.—*Offences relating to Foreign Nations.*

SUB-SECT. 1.—*Offences with respect to Diplomatists.*

Suing ambassador.

1068. Any person suing forth or prosecuting any writ or process interfering with the freedom from legal process enjoyed by ambassadors and other public ministers of foreign States, and, in certain circumstances, their households (*l*), and any solicitor acting in such a case, and any officer executing such writ or process, upon conviction thereof before the Lord Chancellor and the Lord Chief Justice, is by statute to be deemed a violator of the law of nations and a disturber of the public repose, and is liable to such pains, penalties, and corporal punishment as they may judge fit to be imposed (*m*).

Libel on ambassador.

A libel on a foreign ambassador is a common law misdemeanour punishable as tending to interrupt the pacific relations between this country and the nation which he represents (*n*).

SUB-SECT. 2.—*Foreign Enlistment.*

Foreign Enlistment Act, 1870.

1069. It is by statute (*o*) a misdemeanour (1) for any British subject, within or without the King's dominions, to accept, or agree

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(*k*) Kidnapping Act, 1872 (35 & 36 Vict. c. 19), s. 10.

(*l*) See title CONSTITUTIONAL LAW, Vol. VI., p. 428.

(*m*) Diplomatic Privileges Act, 1708 (7 Ann. c. 12), ss. 3, 4. The Act will not protect members of a public minister's suite or household who are occupied in trading (s. 5), and no person is to be proceeded against for having arrested the servant of an ambassador, unless the servant's name has been registered in the office of a Secretary of State and by him transmitted to the sheriffs or under-sheriffs of London and Middlesex (s. 6). The privilege of a person who has been appointed an ambassador from being sued and from arrest extends for such a reasonable period after he is recalled as is necessary to enable him to wind up his official business and prepare for his return to his country, even though his successor has been appointed (*Marshall* v. *Critico* (1808), 9 East, 447; *Musurus Bey* v. *Gadban*, [1894] 1 Q. B. 533; 2 Q. B. 352, C. A.). See title ACTION, Vol. I., p. 19.

There is no known instance of any proceeding against any person under s. 4 of the Diplomatic Privileges Act, 1708 (7 Ann. c. 12). The Act seems to contemplate a summary proceeding without the intervention of a jury, and has, probably, no application to arrest on criminal process, see p. 245, *ante*.

(*n*) *R.* v. *d'Eon* (1764), 1 Wm. Bl. 510, 517; 2 Chitty, Criminal Law, 54; see *R.* v. *Peltier* (1803), 28 State Tr. 529, 617. As to obtaining a passport by fraud, see *R.* v. *Brailsford*, [1905] 2 K. B. 730.

(*o*) Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), ss. 4—11. It has been said that it was a misdemeanour at common law to enter the service of any foreign State without the leave of the King (1 East, P. C. 81). Mercenary service abroad was very common before the passing of the Foreign Enlistment Act, 1870. It is stated by Coke that it is unlawful for a British subject to receive a pension from a foreign King or State without the King's licence (3 Co. Inst.

to accept, without the King's licence, any commission or engagement in the military or naval service of any foreign State at war with any friendly State (*i.e.*, a foreign State which is at peace with His Majesty); or (2) for anyone, whether a British subject or not, within the King's dominions to induce any other person to accept any such commission or engagement (*p*); (3) for any British subject without the King's licence to quit, or go on board any ship with a view of quitting, the King's dominions with intent to accept any such commission or engagement (*q*); (4) for anyone, whether a British subject or not, within the King's dominions to induce any other person to quit, or to go on board any ship with a view of quitting, the King's dominions with the like intent; (5) for anyone to induce any other person to quit the King's dominions under a misrepresentation or false representation of the service in which such person is to be engaged with the intent or in order that such person may accept or agree to accept any such commission (*r*); (6) for the master or owner of any ship without such licence knowingly to take or engage to take or to have on board such ship within the King's dominions any British subject who without the King's licence has accepted such a commission or engagement, or is about to quit the dominions with intent to accept any such commission etc., or any person who has been induced to embark under a false representation of the service in which he is to be engaged with the intent that he may accept any such commission or engagement (*s*); (7) for any person within the King's dominions and without such licence either to build or agree to build or cause to be built any ship with intent or knowledge or having reasonable cause to believe that it will be employed in the military or naval service of any foreign State at war with a friendly State, or to issue any commission for, or equip or despatch, or allow to be despatched, any ship with the like intent or knowledge (*t*); (8) for any person within the King's dominions, by adding to the number of guns or any equipment of war, to increase without the King's licence the warlike force of any ship which, at the time of her being within the dominions, was in the naval service of any

Foreign Enlistment Act, 1870.

144). As to taking military service under a prince or State in India, see Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90).

(*p*) *Ibid.*, s. 4. See *R.* v. *Rumble* (1864), 4 F. & F. 175. As to definition of a foreign State, see *ibid.*, s. 30.

(*q*) *Ibid.*, s. 5.

(*r*) *Ibid.*, s. 6.

(*s*) *Ibid.*, s. 7.

(*t*) *Ibid.*, s. 8; see *R.* v. *Sandoval* (1887), 3 T. L. R. 411; *A.-G.* v. *Sillem* (1863), 2 H. & C. 431; *R.* v. *Rumble*, *supra*. But a person building or equipping a ship in pursuance of a contract made before the commencement of the war is not liable to the penalties imposed for building or equipping, if forthwith upon the King's proclamation of neutrality such person gives notice to a Secretary of State that he is building or equipping the ship, and gives him such particulars of the contract as he may require, and gives such security and permits such other measures to be taken as the Secretary of State may prescribe for ensuring that the ship shall not be removed without the King's licence until the termination of the war (*ibid.*, s. 8). See s. 9 as to the presumption that a vessel built for and used by the foreign State was built with a view to its being so employed. To let a tug to one of the

SECT. 8. Offences relating to Foreign Nations.

foreign State at war with a friendly State (*u*); (9) for any person within the King's dominions and without the King's licence to prepare or fit out any naval or military expedition against the dominions of any friendly State, or to be engaged or employed in such preparation or fitting out or assisting therein or to be employed in any capacity in such expedition (*a*).

If the illegal expedition be prepared within the King's dominions, the participation in it by a British subject outside such dominions is an offence against the Act (*b*).

Punishment.

The punishment for any such offence is fine and imprisonment at the discretion of the court, with or without hard labour, for not more than two years (*c*). In addition to such punishment, in the case of illegal shipbuilding (*d*) the ship, with her equipment, is forfeited to the King, and in the case of illegally fitting out an expedition all ships and their equipments and all arms and munitions of war used in the expedition are forfeited to the King (*e*).

Part XI.—Offences against Public Order.

SECT. 1.—*Offences against Religion* (*f*).

SUB-SECT. 1.—*Blasphemy.*

Blasphemy.

1070. Blasphemy is a misdemeanour at common law punishable by fine and imprisonment without hard labour. It consists in

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combatants for the purpose of towing a prize with a prize crew on board to the home waters of the captor is the despatching of a ship for the purpose of taking part in the naval service of such combatant (*Dyke* v. *Elliott, The Gauntlet* (1872), L. R. 4 P. C. 184). But a telegraph ship employed to lay a cable to be used for civil and postal purposes is not such a ship, even though there is a possibility that the cable may also be used for military purposes (*The International* (1871), L. R. 3 A. & E. 321).

(*u*) Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), s. 10.

(*a*) *Ibid.*, s. 11. See *R.* v. *Sandoval* (1887), 3 T. L. R. 411, 436, 498; *R.* v. *Jameson* (1896), Shorthand Notes, I., 348.

(*b*) *R.* v. *Jameson*, [1896] 2 Q. B. 425. As to powers of search, seizure, and detention of suspected vessels by the Secretary of State and certain public officers, see Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), ss. 21—29.

(*c*) Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), ss. 4—8, 10, 11, 13.

(*d*) *I.e.*, when a person commits an offence under s. 8 of the Act.

(*e*) Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), s. 11. Any overt act of preparation for such an expedition, as by the purchase of guns in this country which are sent to a foreign port to be shipped there on the vessel in which the expedition is to be made, is an offence against the Act (*R.* v. *Sandoval* (1887), 16 Cox, C. C. 206). Accessories are punished as principal offenders (Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), s. 13). Offences against the Act are not expressly excluded from the jurisdiction of quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1), but manifestly ought not to be tried there.

(*f*) The offences mentioned in this section are not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(1) scoffingly or irreverently ridiculing or impugning the doctrines of the Christian faith; or (2) in uttering or publishing contumelious reproaches of Jesus Christ; or (3) in profane scoffing at the Holy Scriptures or exposing any part thereof to contempt or ridicule.

It is not blasphemy with due gravity and propriety to contend that the Christian religion or any part of its doctrine, or the whole or any part of the Holy Scriptures, is untrue (*g*).

It is immaterial whether the blasphemous words were spoken or written; in the latter case they constitute a blasphemous libel.

No criminal prosecution can be commenced against the proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein without the order of a judge at chambers being first obtained (*h*).

SUB-SECT. 2.—*Offences against the Church of England.*

1071. Anyone who utters or publishes seditious words in derogation of the established religion is at common law guilty

Seditious attacks on the established religion.

(*g*) 1 Hawk. P. C., c. 26, ss. 1, 2 (8th ed., Vol. I., 358); 4 Bl. Com. 50; Starkie on Libel, 2nd ed., 145—147, approved by Lord COLERIDGE, C.J., in *R.* v. *Ramsay and Foote* (1883), 15 Cox, C. C. 231; *R.* v. *Woolston* (1729), 2 Stra. 834; *Shore* v. *Wilson* (1842), 9 Cl. & Fin. 355, 524, 539, H. L.; *R.* v. *Waddington* (1822), 1 B. & C. 26; *R.* v. *Hetherington* (1840), 4 State Tr. (N. S.) 563, 590; and see the summing up of ABBOTT, C.J., in *R.* v. *Carlile* (1819), at col. 1424 of the same volume; *R.* v. *Bradlaugh* (1883), 15 Cox, C. C. 217; *R.* v. *Ramsay and Foote, supra*; *R.* v. *Boulter* (1908), 72 J. P. 188.

Some authorities, both old and modern, lay down the proposition that any denial of the truth of Christianity in general or of the existence of God, however decent may be the terms of such denial, is by the common law punishable as blasphemy (see STEPHEN, J., Digest of the Criminal Law, 5th ed., p. 125; see also 1 Hawk. P. C., c. 26, s. 1; *R.* v. *Woolston, supra*; *R.* v. *Eaton* (1812), 31 State Tr. 927, 950; *R.* v. *Gathercole* (1838), 2 Lew. C. C. 237, 254; *Cowan* v. *Milbourn* (1867), L. R. 2 Exch. 230, 234; *Pankhurst* v. *Thompson* (1886), 3 T. L. R. 199). In *R.* v. *Boulter, supra*, PHILLIMORE, J., approved of the summing up of Lord COLERIDGE, C.J., in *R.* v. *Ramsay and Foote, supra*, and disapproved of the view expressed by STEPHEN, J. The stat. (1698) 9 Will. 3, c. 35, enacts that if any person, having been educated in, or at any time made profession of, the Christian religion, should by writing, printing, teaching, or advised speaking deny any one of the Persons in the Holy Trinity to be God, or assert or maintain that there are more gods than one, or deny the Christian religion to be true or the Holy Scriptures to be of divine authority, he should upon conviction upon indictment or information be adjudged incapable of holding any office, and upon a second conviction should suffer other incapacities and be imprisoned for three years; but in the case of words spoken information of the words complained of must be given upon oath to a justice of the peace within four days, and the prosecution be within three months thereafter; if, in the case of a first offence, the person convicted acknowledged and renounced in court his offence or erroneous opinions within four months after conviction, he was to be discharged from further disabilities. The provisions of this Act were, "so far as the same relate to persons denying as therein mentioned respecting the Holy Trinity," repealed by stat. (1813) 53 Geo. 3, c. 160, s. 2; see as to this statute, *per* BEST, J., in *R.* v. *Carlile* (1819), 3 B. & Ald. 161, 167, and *Cowan* v. *Milbourn, supra*, at p. 234. It is believed that there has never been a prosecution for an offence against stat. (1698) 9 Will. 3, c. 35, the provisions of which do not alter the common law (*R.* v. *Carlile, supra*).

It has been held in Ireland to be an offence at common law to burn a Bible contemptuously (*R.* v. *Petcherini* (1856), 7 Cox, C. C. 79).

(*h*) Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), s. 8; see title LIBEL AND SLANDER.

SECT. 1. Offences against Religion.

of a misdemeanour and is punishable by fine and imprisonment (*i*).

Depraving the Sacrament.

1072. Anyone is by statute (*k*) guilty of a misdemeanour who depraves, despises, or contemns the Sacrament of the Lord's Supper by any contemptuous words or otherwise. The punishment for this offence is imprisonment and fine at the King's pleasure.

Depraving the Book of Common Prayer.

1073. Anyone is by statute (*l*) guilty of a misdemeanour who in any plays, songs, rhymes, or by other open words, speaks anything in derogation, depraving, or despising of the Book of Common Prayer or of anything therein contained, or causes the minister in any parish church etc. to use any other form of prayer, or interrupts a clergyman saying prayer in the manner set out in the Book of Common Prayer.

Punishment.

The punishment is a fine of 100 marks for the first and 400 marks for the second offence, and for the third offence the forfeiture of all goods and chattels and imprisonment for life (*m*).

Priest of the Church of England refusing to conform to the Book of Common Prayer.

1074. Any priest or other minister of the Church who ought to say common prayer or minister the sacraments is by statute (*n*) guilty of a misdemeanour, if he refuses to do so in the order set forth in the Book of Common Prayer, or if he uses any other rite, ceremony, or form than is therein contained, or preaches or speaks anything in derogation or depraving of the Book of Common Prayer or of anything therein contained.

Punishment.

The punishment is for the first offence the forfeiture to the King of the profit of the offender's spiritual benefices for one year and imprisonment for six months, for the second offence deprivation of all his spiritual promotions and imprisonment for a year (or for life if he has no such promotions), and for the third offence a similar deprivation and imprisonment for life (*o*).

SECT. 2.—*Offences relating to Marriage.*

SUB-SECT. 1.—*Bigamy.*

Bigamy.

1075. Subject to the qualifications hereafter mentioned, everyone is guilty of felony (*p*) who, being married, marries any other person

(*i*) 1 Hawk. P. C., c. 26, s. 5 (8th ed., Vol. I., 358); *R.* v. *Gathercole* (1838), 2 Lew. C. C. 237, 254. But see the observations of Lord COLERIDGE, C.J., in *R.* v. *Ramsay and Foote* (1883), 48 L. T. 733, 735. The statement in the text must now be taken with the qualification that the words, to be indictable, must be ribald, irreverent, and contumelious, and even with that qualification the offence is practically obsolete. Profane swearing is punishable on summary conviction (Profane Oaths Act, 1745 (19 Geo. 2, c. 21), s. 1). As to disturbing public worship, see p. 477, *ante*.

(*k*) (1547) 1 Edw. 6, c. 1, s. 1, revived by (1558) 1 Eliz. c. 1, s. 15; see also (1553) 1 Mar. sess. 2, c. 3.

(*l*) Stat. (1558) 1 Eliz. c. 2, ss. 9, 10, 11; stat. (1662) 14 Car. 2, c. 4, s. 20. The expression "mark" is a "money of account" to express 13*s.* 4*d.*, and has long passed out of use.

(*m*) *Ibid.*

(*n*) Stat. (1558) 1 Eliz. c. 2, s. 4.

(*o*) *Ibid.* As to limitation of time for the commencement of a prosecution, see *ibid.*, s. 20.

(*p*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 57; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

during the life of the former wife or husband, whether the second marriage is in England or elsewhere (*q*).

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*r*). The offence is not triable at quarter sessions (*rr*).

Absence for seven years.

1076. A person marrying a second time, whose wife or husband has been continually absent from such person for seven years then last past, and has not been known by such person to be living at any time within that period, cannot be convicted of bigamy (*s*).

In the case of such an absence the presumption is in favour of innocence, and it is incumbent upon the prosecution to show that the prisoner knew that the wife or husband was alive (*t*). It is not sufficient to prove that the prisoner had the means of such knowledge (*u*).

Even if the statutory period of seven years has not elapsed, the *bona-fide* belief of the prisoner at the time of the second marriage that the husband or wife was dead, provided such belief was based on reasonable grounds, affords a good defence to an indictment for bigamy (*v*).

Invalid second marriage.

1077. A person already married who, having the intention of appearing to contract a second marriage, goes through a form known to and recognised by the law as capable of producing a valid marriage, is guilty of bigamy, although the second marriage, even if it were not bigamous, would be otherwise invalid (*w*).

Void and voidable marriages.

1078. If the first marriage is void by reason of consanguinity, affinity, lunacy, or any other defect, the second marriage is not

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(*q*) This includes not only the King's dominions, but any foreign country (*R.* v. *Russell* (*Earl*), [1901] A. C. 446). It is also immaterial where the first marriage has been celebrated (2 Hale, P. C. 692). But where such second marriage is contracted elsewhere than in England or Ireland and the person who contracts it is not a British subject, he is not punishable by English law (Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 45).

(*r*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 57.

(*rr*) Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1.

(*s*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 57; *R.* v. *Cullen* (1840), 9 C. & P. 681; *R.* v. *Jones* (1842), Car. & M. 614. The prisoner is entitled to the protection of the section, although he may have wilfully deserted his wife (*R.* v. *Faulkes* (1903), 19 T. L. R. 250).

(*t*) *R.* v. *Heaton* (1863), 3 F. & F. 819; *R.* v. *Curgenwen* (1865), L. R. 1 C. C. R. 1; compare *R.* v. *Jones* (1883), 11 Q. B. D. 118, C. C. R., where, there being no evidence of the date of the separation between the prisoner and his wife, to whom he had been married seventeen years before the second marriage, or as to when he had last seen her, the court upheld the conviction.

(*u*) *R.* v. *Briggs* (1856), Dears. & B. 98.

(*v*) *R.* v. *Tolson* (1889), 23 Q. B. D. 168, C. C. R.

(*w*) *R.* v. *Allen* (1872), L. R. 1 C. C. R. 367, 376 (marriage within the prohibited degrees), disapproving of the Irish case *R.* v. *Fanning* (1866), 10 Cox, C. C. 411; see also *R.* v. *Allison* (1806), Russ. & Ry. 109; *R.* v. *Brawn* (1843), 1 Car. & Kir. 144; *R.* v. *Rea*, *supra*. The rule laid down in *R.* v. *Allen* will not be applicable in the case of a second marriage by a form not known to and recognised by the law, as in *Burt* v. *Burt* (1860), 2 Sw. & Tr. 88.

SECT. 2. Offences relating to Marriage.

bigamous (*x*). But if the first marriage is only voidable, as by reason of impotence, and has not been avoided at the date of the second marriage, the second marriage is bigamous (*y*).

Divorced person.

1079. If the first marriage has been dissolved by a divorce *à vinculo matrimonii* before the date of the second marriage, or has been declared void by any court of competent jurisdiction, the second marriage is not bigamous (*z*), but it is otherwise, if there has only been a judicial separation, or if a decree *nisi* for divorce has not been made absolute (*a*).

An English court will only recognise the validity of a divorce obtained abroad, where at the date of the institution of proceedings for divorce the parties were domiciled within the jurisdiction of the court pronouncing the decree, or where the State of the domicil recognises such divorce and where the court which pronounced the decree was competent by the laws of the country which gave it jurisdiction (*b*). Where the parties had only a "matrimonial residence," and not a domicil in the ordinary sense within the foreign jurisdiction, the validity of the divorce will not be recognised (*c*), and any British subject who remarries subsequently in the lifetime of his wife may be convicted of bigamy (*d*).

The other party to the bigamous marriage is punishable as a principal in the second degree, if he or she knew at the time of such marriage that the previous marriage was still subsisting (*e*).

Evidence.

1080. It is for the prosecution to prove the celebration of the first marriage and the identity of the parties. If the marriage is alleged by the accused to be invalid on the ground of consanguinity, informality etc., he must adduce evidence of such invalidity. If the celebration of the first marriage is proved, the presumption, in the absence of evidence to the contrary, is in favour of the validity of the marriage (*f*).

An actual marriage must be proved. Evidence of reputation and cohabitation are not sufficient to support the indictment (*g*).

The prisoner's admission of the first marriage is, it seems,

(*x*) *R.* v. *Chadwick* (1847), 11 Q. B. 205, 235; *R.* v. *Willshire* (1881), 6 Q. B. D. 366; *R.* v. *Millis* (1844), 10 Cl. & Fin. 534, H. L.

(*y*) 3 Co. Inst. 88; *R.* v. *Jacobs* (1826), 1 Mood. C. C. 140; *B.* v. *B.* (1891), 27 L. R. Ir. 587, 608.

(*z*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 57.

(*a*) See *Norman* v. *Villars* (1877), 2 Ex. D. 359, C. A.; *Stanhope* v. *Stanhope* (1886), 11 P. D. 103, 109, C. A.

(*b*) See title CONFLICT OF LAWS, Vol. VI., pp. 266 *et seq*, and *Bater* v. *Bater*, [1906] P. 209.

(*c*) *Le Mesurier* v. *Le Mesurier*, [1895] A. C. 517, P. C.

(*d*) *R.* v. *Russell* (*Earl*), [1901] A. C. 446.

(*e*) *R.* v. *Brawn* (1843), 1 Car. & Kir. 144; 1 Russell on Crimes, 664, n.

(*f*) *R.* v. *Allison* (1806), Russ. & Ry. 109; *R.* v. *Mainwaring* (1856), 26 L. J. (M. C.) 10, C. C. R.; *R.* v. *Rea* (1872), L. R. 1 C. C. R. 365; *R.* v. *Cresswell* (1876), 1 Q. B. D. 446, C. C. R. As to the requirements for the validity of a marriage, see title HUSBAND AND WIFE, *post*.

(*g*) *Morris* v. *Miller* (1767), 4 Burr. 2057; *Catherwood* v. *Caslon* (1844), 13 M. & W. 261, 265. See *R.* v. *Wilson* (1862), 3 F. & F. 119.

not sufficient evidence of the fact without proving the actual celebration (*h*).

A certified copy of an entry purporting to be sealed with the seal of the register office is receivable as evidence of the birth, death, or marriage to which it relates without further proof of such entry (*i*).

To prove the identity of the prisoner with the person named in the certificate it is not necessary to call as a witness one of the subscribing witnesses to the register; any evidence which satisfies the jury as to the identity of the parties is sufficient (*j*).

The first husband or wife is not (*k*), but, when the first marriage has been proved, the second wife is, a competent witness for the prosecution (*l*).

It must be proved to the satisfaction of the jury that the first husband or wife was alive at the date of the second marriage. The law makes no presumption on the subject (*m*).

SUB-SECT. 2.—*Irregular Solemnisation of Marriage.*

Irregular solemnisation of marriage.

1081. Everyone is by statute (*n*) guilty of a felony who (1), except by a special licence from the Archbishop of Canterbury, solemnises a marriage in any place other than a church or chapel in which marriages may be solemnised according to the rites of the Church of England, or a building which is duly registered under the Marriage Act, 1836 (*o*), or the office of a registrar of marriages; or (2) solemnises a marriage at any other time than between 8 a.m. and 3 p.m., except by such special licence; or (3) solemnises a marriage without due publication of banns except where such publication is not needed by law; or (4), falsely pretending to be in holy orders, solemnises matrimony according to the rites of the Church of England; or (5) being a registrar of marriages, knowingly issues a certificate for marriage after the expiration of three months from the date of the notice to be given by one of the parties intending to be married, or issues any certificate for marriage by licence

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(*h*) *R.* v. *Truman* (1795), 1 East, P. C. 470; *R.* v. *Savage* (1876), 13 Cox, C. C. 178; *R.* v. *Flaherty* (1847), 2 Car. & Kir. 782; *R.* v. *Lindsay* (1902), 66 J. P. 505; and *Catherwood* v. *Caslon* (1844), 13 M. & W. 261, 265. But see *R.* v. *Newton* (1843), 2 Mood. & R. 503.

(*i*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 38.

(*j*) 1 East, P. C. 472, *e.g.* evidence of the handwriting of the parties to the register or that the bell-ringers at the wedding were paid by them are given as examples. A photograph has been admitted as evidence (*R.* v. *Tolson* (1864), 4 F. & F. 103, WILLES, J.).

(*k*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (c). See p. 405, note (*l*), *ante*.

(*l*) 1 Hale, P. C. 693; 1 East, P. C. 469.

(*m*) *R.* v. *Lumley* (1869), L. R. 1 C. C. R. 196; *R.* v. *Willshire* (1881), 6 Q. B. D. 366, C. C. R. If, however, the husband and wife have been separated for less than seven years, the prosecution need not prove affirmatively that the prisoner knew that his wife was alive. It is for him to disprove this (*R.* v. *Ellis* (1858), 1 F. & F. 309; *R.* v. *Jones* (1869), 11 Cox, C. C. 358, C. C. R.).

(*n*) Marriage Act, 1823 (4 Geo. 4, c. 76), s. 21; Marriage Act, 1836 (6 & 7 Will. 4, c. 85), ss. 39, 40, 41; Marriage Act, 1886 (49 Vict. c. 14), s. 1; Marriage Act, 1898 (61 & 62 Vict. c. 58). There are special provisions in these Acts with reference to Jews and Quakers.

(*o*) 6 & 7 Will. 4, c. 85.

SECT. 2. Offences relating to Marriage.

before the expiration of seven days after the entry of the notice, or issues any certificate for marriage without licence before the expiration of twenty-one days after the entry of the notice, or issues any certificate the issue of which shall have been forbidden by any person authorised to forbid it, or knowingly and wilfully registers or solemnises in his office any marriage declared by the Marriage Act, 1836 (*p*), to be null and void.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*a*).

A prosecution for any of these offences must be commenced within three years after the commission of the offence (*b*).

Non-compliance in chapels etc.

1082. Every person is by statute (*c*) guilty of a misdemeanour who, being a person authorised by the trustees or other governing body of a building registered for the solemnising of marriages to solemnise marriage therein, refuses or fails to comply with the Marriage Act, 1898 (*d*), or the enactments or regulations for the time being in force with respect to the solemnisation and registration of marriages.

The punishment for this offence is imprisonment with or without hard labour for not more than two years or a fine not exceeding £50; such a person on conviction for such an offence ceases to be an authorised person (*e*).

SUB-SECT. 3.—*False Declarations and Notices.*

False declaration.

1083. A person who knowingly and wilfully makes a false declaration or signs a false notice or certificate required by the Marriage Act, 1836 (*f*), or the Foreign Marriage Act, 1892 (*g*), for the purpose of procuring a marriage, or who forbids the issue of the registrar's certificate, or forbids a marriage under the last-named Act by falsely representing himself to be a person whose consent to the marriage is required by law knowing such representation to be false, incurs the penalties of perjury.

The prosecution must be commenced within three years (*h*).

False statement.

1084. Everyone is subject to the same penalties as if he were guilty of perjury (*i*) who wilfully makes or causes to be made for the

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(*p*) 6 & 7 Will. 4, c. 85; see also title HUSBAND AND WIFE.

(*a*) Marriage Act, 1823 (4 Geo. 4, c. 76), s. 21; Marriage Act, 1836 (6 & 7 Will. 4, c. 85), s. 39; Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 8. If the prosecution is under the Marriage Act, 1823, the maximum sentence of penal servitude is fourteen years; see *ibid.*, s. 21. The offence, it seems, is triable at quarter sessions.

(*b*) Marriage Act, 1823, *supra*, s. 21; Marriage Act, 1836, *supra*, s. 41.

(*c*) Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 12.

(*d*) 61 & 62 Vict. c. 58.

(*e*) *Ibid.*, s. 12; *i.e.* a person who is certified as such under the Marriage Act, 1898, *supra*, s. 6 (3).

(*f*) 6 & 7 Will. 4, c. 85.

(*g*) 55 & 56 Vict. c. 23. Offences under this sub-section are not triable at quarter sessions.

(*h*) Marriage Act, 1836, *supra*, ss. 38, 41; Foreign Marriage Act, 1892, *supra*, s. 15. See also Marriage Act, 1898 (61 & 62 Vict. c. 58), s. 12.

(*i*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 41.

purpose of being inserted in any register of marriage any false statement as to the particulars which are required by the Births and Deaths Registration Act, 1836 (*j*), to be registered.

The false statement, to be within the Act, must be wilfully and intentionally untrue and not a mere mistake (*k*).

SECT. 3.—*Offences against Decency and Morality* (*l*).

SUB-SECT. 1.—*Indecent Exposure.*

Indecency.

1085. The public exhibition of the naked person or any other act of open and notorious lewdness is an indictable misdemeanour at common law (*m*). Similar exposure, even though in a place of public resort, is not indictable at common law, if it is only visible by one person (*n*). The exposure is indictable, although the place be not one of public resort, if the place be such that a number of persons can and do see the act (*o*).

Bathing in a state of nudity in a place near to which persons frequently pass is indictable (*p*).

The punishment for this offence is a fine and imprisonment with or without hard labour (*q*).

Indecent exhibition.

1086. It is a common law misdemeanour (*r*) to keep a booth for the purpose of holding an indecent exhibition which persons are invited to come in and see, or to show on the highway a picture or exhibition which, although not indecent in the ordinary sense, is nevertheless disgusting and offensive (*s*).

(*j*) Births and Deaths Registration Act, 1836 (6 & 7 Will. 4, c. 86), s. 41 ; and see p. 742, *post*.

(*k*) *R.* v. *Dunboyne* (*Lord*) (1850), 3 Car. & Kir. 1. As to forging marriage certificates and forging or destroying marriage registers, see p. 741, *post*.

(*l*) As to rape, see p. 611, *post;* indecent assault, p. 619, *post*.

(*m*) *R.* v. *Sedley* (1663), 1 Sid. 168, from which it appears that this offence had formerly been punishable in the Star Chamber. See *R.* v. *Harris* (1871), L. R. 1 C. C. R. 282, and the cases cited *infra*. By statute every person who wilfully, openly, and obscenely exposes his person in any street, road, or public highway, or in the view thereof, or in any place of public resort with intent to insult any female, is to be deemed a rogue and vagabond and liable on summary conviction to three months' imprisonment (Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4 ; as to a repetition of the offence which makes the offender an incorrigible rogue, see ss. 5, 10).

(*n*) *R.* v. *Watson* (1847), 2 Cox, C. C. 376 ; *R.* v. *Webb* (1848), 3 Cox, C. C. 183, C. C. R.; *R.* v. *Farrell* (1862), 9 Cox, C. C. 446, C. C. R. (Ir.) ; but see Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4.

(*o*) As on the roof of a house (*R.* v. *Thallman* (1863), 9 Cox, C. C. 388, C. C. R.), or in a field off the footway where people frequently pass, though without the legal right to do so (*R.* v. *Wellard* (1884), 14 Q. B. D. 63, C. C. R.).

(*p*) *R.* v. *Crunden* (1809), 2 Camp. 89 ; *R.* v. *Reed* (1871), 12 Cox, C. C. 1.

(*q*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29. This offence and the offence next mentioned are triable at quarter sessions.

(*r*) *R.* v. *Saunders* (1875), 1 Q. B. D. 15, C. C. R. ; and a person who wilfully exposes to public view in any highway or public place any indecent exhibition may also be dealt with as a rogue and vagabond (Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4 ; Vagrancy Act, 1838 (1 & 2 Vict. c. 38), s. 2).

(*s*) *R.* v. *Grey* (1864), 4 F. & F. 73.

SECT. 3. Offences against Decency and Morality.

SUB-SECT. 2.—*Indecent Publications.*

1087. Anyone is guilty of a common law misdemeanour who publishes any indecent matter tending to the destruction of the morals of society and to deprave and corrupt those whose minds are open to immoral influences (*a*).

Indecent prints.

1088. It is a misdemeanour to procure indecent prints with intent to publish them, but it is not an offence to simply have possession of obscene prints or literature even with intent to publish them (*b*).

Motive.

1089. If the necessary or natural effect of a publication is prejudicial to public morality or decency, the motive of the defendant in publishing the obscene matter is immaterial. If the work is manifestly obscene, the defendant will be taken to have published it with an unlawful intent; he cannot be heard to say that, though he broke the law, he did so from a wholesome and salutary purpose, and not for gain (*c*). But in many cases it is material to consider to whom and under what circumstances the publication is made. Some matters may be properly published to practitioners or students of medicine or surgery, the publication of which to boys or girls or even to the public indiscriminately would necessarily tend to the corruption of morals and therefore be illegal (*d*). The privilege which the law gives to reports of judicial proceedings does not extend to reports containing matters of an obscene and demoralising character (*e*).

Obscene libel in newspaper.

A prosecution cannot be commenced against the proprietor, publisher, editor, or any person responsible for the publication of

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(*a*) *R.* v. *Curl* (1727), 2 Stra. 788, which seems to have been the first successful prosecution for this offence in a temporal court. In *R.* v. *Read* (1707), 11 Mod. Rep. 142, the court had held that the publication of an obscene book was not indictable, but was punishable only in a spiritual court. See now *R.* v. *Hicklin* (1868), L. R. 3 Q. B. 360, 371; *R.* v. *Barraclough*, [1906] 1 K. B. 201, C. C. R.

(*b*) *Dugdale* v. *R.* (1853), 1 E. & B. 435; *R.* v. *Rosenstein* (1826), 2 C. & P. 414. But possession of such prints etc. may be evidence of procuring (p. 260, *ante*).

(*c*) *R.* v. *Hicklin* (1868), L. R. 3 Q. B. 360; *Steele* v. *Brannan* (1872), L. R. 7 C. P. 261.

(*d*) *R.* v. *Hicklin, supra.*

(*e*) *Steele* v. *Brannan, supra; R.* v. *Carlile* (1819), 3 B. & Ald. 167; *R.* v. *Creevey* (1813), 1 M. & S. 273, 281; and see Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), ss. 3, 4. Provision has been made for the search for and seizure of obscene books or pictures. A stipendiary police magistrate or any two justices, upon complaint being made on oath, may issue a warrant to search any premises where the complainant alleges he has reason to believe that any obscene books, writings, or pictures are kept for sale or distribution, or exhibition for purposes of gain, or lending on hire, or otherwise published for gain; if such articles are seized upon the execution of the warrant, the occupier of the premises may be summoned to show cause why such articles should not be destroyed, and upon the hearing of the summons the justices, if satisfied that they are of the character stated in the warrant and have been kept for the purposes aforesaid, and that their publication would amount to a misdemeanour, may order them to be destroyed (Obscene Publications Act, 1857 (20 & 21 Vict. c. 83), s. 1; and see *R.* v. *Hicklin, supra; Ex parte Bradlaugh* (1878), 3 Q. B. D. 509).

a newspaper for any obscene or other libel published therein without an order of a judge at chambers being first obtained (*f*).

Upon a prosecution for an obscene libel it is not necessary to set out the obscene passages in the indictment, but the alleged libel, with the obscene passages identified, may be deposited with the indictment (*g*).

The punishment for the above-mentioned offences is fine and imprisonment with or without hard labour (*h*).

Sending indecent prints etc. by post.

1090. Everyone is guilty of a misdemeanour (*i*) who sends or attempts to send a postal packet which encloses any indecent or obscene print, painting, photograph, lithograph, engraving, book, or card, or any indecent or obscene article, or has on such packet or its cover any words, marks, or designs of an indecent, obscene, or grossly offensive character.

The punishment for this offence on conviction on indictment is imprisonment with or without hard labour for twelve months (*j*).

SUB-SECT. 3.—*Unnatural Offences.*

Unnatural offences.

1091. It is a felony by statute (*k*) to commit the abominable crime of buggery either with mankind or with any animal.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*l*).

(*f*) Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), s. 8.

(*g*) *Ibid.*, s. 7; see *R.* v. *Barraclough*, [1906] 1 K. B. 201, C. C. R.

(*h*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29. These offences are triable at quarter sessions.

(*i*) Post Office Act, 1908 (8 Edw. 7, c. 48), s. 63 (1) (b). See *R.* v. *De Marny*, [1907] 1 K. B. 388, C. C. R., for a prosecution under the corresponding section of the Post Office Protection Act, 1884 (47 & 48 Vict. c. 76), s. 4, now repealed. Post Office regulations may be made for preventing the sending or delivery by post of any obscene prints (*ibid.*, s. 16).

(*j*) Post Office Act, 1908 (8 Edw. 7, c. 48), s. 63 (2). The offence is triable at quarter sessions. Upon summary conviction the punishment is a fine of £10 (*ibid.*).

Affixing to or inscribing on any house, wall, hoarding etc. so as to be visible to a person passing along any street or footpath, or to or on any urinal, or delivering or exhibiting to passers-by, any picture or printed or written matter which is of an indecent or obscene nature is on summary conviction punishable by a fine of £2 or imprisonment for a month (Indecent Advertisements Act, 1889 (52 & 53 Vict. c. 18), s. 3). As to certain forms of advertisement which the Act declares to be indecent within the meaning of this section, see s. 5. A person who gives to any other person any such pictures or printed or written matter with intent that the same should be so affixed, inscribed, or delivered is liable to a penalty of £5 or imprisonment for three months (*ibid.*, s. 4).

(*k*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 61.

(*l*) This offence was probably first made punishable by the common law courts by stat. (1533-4) 25 Hen. 8, c. 6 (2 Stephen, History of the Criminal Law, 429). See, however, 1 Hawk. P. C., c. 4). The punishment by 25 Hen. 8, c. 6, was death, and it so remained until the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 61 of which fixed the minimum punishment at ten years' penal servitude; the minimum punishment was abolished by the Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

SECT. 3. Offences against Decency and Morality.

Everyone is by statute (*m*) guilty of a misdemeanour who attempts to commit this crime, or is guilty of any assault with intent to commit it or of any indecent assault upon any male person.

The punishment for such offence is penal servitude for not more than ten nor less than three years, or imprisonment with or without hard labour for not more than two years (*n*).

Sodomy.

1092. The offence of sodomy can only be committed *in ano* (*o*). It may be committed by a man upon a woman (*p*), even upon his own wife (*q*). It is sufficient to prove any degree of penetration, though without emission (*r*). Consent is no defence, and a person who consents to the commission or the attempted commission of the offence upon him is guilty as a principal, unless he be under the age of fourteen (*s*). A man who induces a boy under fourteen years of age to commit such an act upon him is guilty of this offence (*t*), but, it seems, a boy under fourteen cannot be convicted of sodomy (*u*).

Upon an indictment for an unnatural offence, if the evidence does not show that the offence was completed, the accused may be convicted of an attempt to commit it (*x*). Evidence cannot be given of a previous admission by the prisoner that he had habitually committed and had a natural inclination to commit such practices, unless such a statement is made at or about the time of the commission of the offence or on the prisoner's arrest (*y*).

When the person upon whom the offence is committed is a consenting party, and therefore an accomplice, the accused should

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(*m*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 62.

(*n*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions. As to the power to inflict a fine upon a person convicted of this and of any other indictable misdemeanour against the Offences against the Person Act, 1861, see s. 71 of that Act and p. 412, *ante*. As to requiring a person convicted of any felony punishable under the Offences against the Person Act, 1861, otherwise than with death to enter into recognisances and find sureties for good behaviour and to keep the peace, see s. 71 of that Act.

(*o*) *R.* v. *Jacobs* (1817), Buss. & Ry. 331.

(*p*) *R.* v. *Wiseman* (1718), Fortes. Rep. 91, though some of the judges doubted; see also Swinburn on Wills, 7th ed., Vol. I., 179.

(*q*) *R.* v. *Jellyman* (1838), 8 C. & P. 604.

(*r*) *R.* v. *Reekspear* (1832), 1 Mood. C. C. 342; Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 63.

(*s*) 3 Co. Inst. 59; 1 Hale, P. C. 670; but upon a charge of assault with intent to commit sodomy consent will afford a defence, unless the person alleged to be assaulted is under the age of thirteen years (Criminal Law Amendment Act, 1880 (43 & 44 Vict. c. 45), s. 2), or is of such an age or in such a physical condition as to be ignorant of the nature of the act intended to be done, as mere submission without acquiescence does not amount to consent (*R.* v. *Wollaston* (1872), 12 Cox, C. C. 180, C. C. R.; *R.* v. *Lock* (1872), L. R. 2 C. C. R. 10).

(*t*) *R.* v. *Allen* (1848), 1 Den. 364.

(*u*) See p. 239, *ante*.

(*x*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 9.

(*y*) *R.* v. *Cole* (1810), 3 Russell on Crimes, 251, C. C. R.

not be convicted on the evidence of the accomplice alone without corroborating evidence (*z*).

Soliciting.

1093. Every person who solicits or attempts to solicit a person to the commission of sodomy is guilty of a misdemeanour at common law (*a*).

The punishment for this offence is fine, and imprisonment with or without hard labour (*b*).

Bestiality.

1094. Bestiality can be committed by either man or woman (*c*) and with any animal (*d*). As in sodomy, any degree of penetration is sufficient without proof of emission (*e*). If the prosecution is delayed for an unreasonable time, the case should not be allowed to go to the jury (*f*).

Gross indecency with a male person.

1095. Any male person is by statute guilty of a misdemeanour (*g*) who in public or private commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of any act of gross indecency with another male person (*h*).

The punishment for this offence is imprisonment for two years with or without hard labour (*i*).

SUB-SECT. 4.—*Disorderly Houses.*

Disorderly houses.

1096. Anyone is guilty of a misdemeanour at common law, punishable by fine or imprisonment with or without hard labour (*j*), who keeps a common ill-governed and disorderly house (*k*). Bawdy

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(*z*) *R.* v. *Jellyman*, *supra*; *R.* v. *Tate*, [1908] 2 K. B. 680, C. C. R.; and see pp. 388, 408, *ante*.

(*a*) *R.* v. *Ransford* (1874), 13 Cox, C. C. 9, C. C. R.; 2 Chitty, Criminal Law, 50. See also Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 11, *infra*. The common law offence is triable at quarter sessions.

(*b*) This offence is triable at quarter sessions.

(*c*) 3 Co. Inst. 59; 1 Hale, P. C. 669.

(*d*) *R.* v. *Brown* (1889), 24 Q. B. D. 357, C. C. R.

(*e*) *R.* v. *Cozins* (1834), 6 C. & P. 351.

(*f*) *R.* v. *Robins* (1844), 1 Cox, C. C. 114.

(*g*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 11. Where attempted sodomy or an assault with intent to commit that offence or an indecent assault is alleged to have been committed upon a child, the provisions in the Children Act, 1908 (8 Edw. 7, c. 67), ss. 28—31, with reference to taking the depositions of the child (as to which, see p. 408, *ante*) will apply.

(*h*) This will include the defendant himself (*R.* v. *Jones*, [1896] 1 Q. B. 4, C. C. R.).

(*i*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69). This offence is not triable at quarter sessions (*ibid.*, s. 17).

(*j*) Hard Labour Act, 1822 (3 Geo. 4, c. 114); *R.* v. *Higginson* (1762), 2 Burr. 1232.

(*k*) 3 Co. Inst. 205; Hard Labour Act, 1822 (3 Geo. 4, c. 114). By statute (Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 13), any person who (1) keeps or manages or assists in the management of a brothel; or (2) being the tenant, lessee, or occupier of any premises knowingly permits them to be used as a brothel or for the purposes of habitual prostitution; or (3) being the lessor or landlord of any premises, or his agent, lets them or any part thereof with the knowledge that they are to be used as a brothel, or is wilfully a party to the continued use of such premises as

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houses or brothels (*l*), unlicensed places of entertainment in the metropolis, gaming houses and betting houses are disorderly houses (*m*).

(i.) *Brothels.*

Brothels.

1097. A "brothel" means a place resorted to by persons of both sexes for the purpose of prostitution. A prostitute receiving men only into her own rooms cannot be convicted of keeping a brothel (*n*).

It is not necessary to constitute the offence that there should be any indecency or disorderly conduct perceptible from the exterior, or that the premises should have caused a nuisance to the neighbours (*o*); nor is it necessary, upon a prosecution for the common law offence, to show that the defendant was the real owner or keeper of the brothel. It is sufficient that he appeared, acted, or behaved himself as such or as the person having the management of the house (*p*).

The offence of permitting a house to be used as a brothel is a continuing one, and the permitting may therefore be charged in the indictment as extending over several days (*q*).

Procuration.

1098. Everyone is by statute (*a*) guilty of a misdemeanour (1) who procures or attempts to procure any woman to leave the United Kingdom with intent that she may become an inmate of a

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a brothel, is liable on summary conviction to a fine of £20 or imprisonment for three months, and on a subsequent conviction to a fine of £40 or imprisonment for four months. A licensed victualler who is convicted of permitting his premises to be a brothel is liable to a fine of £20, forfeits his license, and is disqualified for ever from holding any licence for the sale of intoxicating liquors (Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 15). See *R.* v. *Holland* (*Justices*) (1882), 46 J. P. 312. See also s. 14 as to harbouring prostitutes.

(*l*) The offence is triable at quarter sessions, see Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 5; see *R.* v. *Charles* (1861), Le. & Ca. 90.

(*m*) See also titles GAMING AND WAGERING; THEATRES. As to disorderly inns, see p. 555, *post*, and titles INNS AND INNKEEPERS; INTOXICATING LIQUORS.

(*n*) *Singleton* v. *Ellison*, [1895] 1 Q. B. 607. In this case the charge against the defendant, a prostitute, was that of "keeping a brothel" within the meaning of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 13. If the charge had been under the same section that she, as tenant or occupier of the premises, permitted them to be used for the purposes of habitual prostitution, it is submitted that she might have been convicted of that offence. If several flats in a block of buildings under one roof are used for the purpose of prostitution, the whole block may be a brothel (*Durose* v. *Wilson* (1907), 71 J. P. 263).

(*o*) *R.* v. *Holland* (*Justices*) (1882), 46 J. P. 312, *per* GROVE, J., at p. 312; *R.* v. *Rice* (1886), L. R. 1 C. C. R. 21.

(*p*) Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 8; see ss. 5, 6, 7, as to complaint by two inhabitants of the parish with a view to compel a prosecution. Upon such a complaint being made and the security required by that Act being given, a warrant must be issued for the arrest of the person alleged to be keeping a brothel, who is then bound over to appear at next quarter sessions or assizes to answer any indictment which may be found against him (*ibid.*, s. 6; see Disorderly Houses Act, 1818 (58 Geo. 3, c. 70), s. 7). These provisions are applied by the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 13, with the necessary modifications, to prosecutions for the offences mentioned in that section (see *R.* v. *Newton*, [1892] 1 Q. B. 648).

(*q*) *Ex parte Burnby*, [1901] 2 K. B. 458.

(*a*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 2 (3) (4).

brothel elsewhere (*b*); or (2) procures or attempts to procure a woman to leave her usual place of abode in the United Kingdom (such place not being a brothel) with intent that she may, for the purposes of prostitution, become an inmate of a brothel within or without the King's dominions (*c*).

The punishment for such offence is imprisonment with or without hard labour for not more than two years (*d*).

No one can be convicted of any such offence upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused (*e*).

Detaining woman in a brothel.

1099. Any person is by statute (*f*) guilty of a misdemeanour who detains a woman against her will (1) in any premises with intent that she may be unlawfully and carnally known by any man; or (2) in any brothel.

The punishment for this offence is imprisonment with or without hard labour for two years (*g*).

Meaning of "detain."

1100. Where a woman is upon any premises for the purpose of having any unlawful carnal connection or is in any brothel, a person is deemed to detain her there, if with intent to induce her to remain in such premises or in the brothel he withholds from her any wearing apparel or other property belonging to her, or threatens her with legal proceedings, if she takes away with her any wearing apparel lent to her (*h*).

Conspiring to seduce a woman.

1101. Anyone is guilty of a misdemeanour at common law who conspires together with one person or more to procure a woman for the purpose of prostitution, or to seduce her or cause her to be seduced (*i*).

It is unnecessary to allege or prove that such woman had been previously chaste (*i*).

(ii.) *Unlicensed Places of Entertainment.*

Unlicensed house etc. for public dancing.

1102. Any house, room, garden or other place kept for public dancing, music, or other public entertainment of the like kind in the

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(*b*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 2 (3).

(*c*) *Ibid.*, s. 2 (4).

(*d*) *Ibid.*, s. 2. No indictment under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), is triable at quarter sessions (*ibid.*, s. 17).

(*e*) *Ibid.*, s. 2. As to offences against women and girls, see p. 611, *post*.

(*f*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 8.

(*g*) *Ibid.*

(*h*) *Ibid.* A justice of the peace may, upon a sworn information being laid, issue a search warrant for any woman or girl alleged to be unlawfully detained for immoral purposes (*ibid.*, s. 10). The search warrant, being a judicial act, will protect the person who laid the information from an action, if he has acted in good faith and has stated the facts fairly to the justice (*Hope* v. *Evered* (1886), 17 Q. B. D. 338; *Lea* v. *Charrington* (1889), 23 Q. B. D. 45; affirmed, *ibid.*, 272, C. A.).

(*i*) *R.* v. *Grey* (*Lord*) (1682), 9 State Tr. 127; *R.* v. *Mears* (1851), 2 Den. 79; *R.* v. *Delaval* (1763), 3 Burr. 1434; *R.* v. *Howell* (1864), 4 F. & F. 160. In all these cases the woman was under the age of twenty-one. In *R.* v. *Delaval* (*supra*, at p. 1438) Lord MANSFIELD, C.J., stated that he remembered a case in the Court of Chancery wherein it appeared that a man had formally assigned his

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cities of London and Westminster, or within twenty miles thereof (*k*), without a licence from the county council (*l*) is to be deemed a disorderly house or place, and every person keeping it without such licence may be indicted as the law directs in the case of disorderly houses (*m*).

Theatres and other places licensed by the Crown or by the Lord Chamberlain are excepted from these provisions (*n*).

It is immaterial that the entertainment is respectable and the company attending it is well behaved and that no actual nuisance is occasioned (*o*).

To render the occupier of the house liable the entertainment must be of a public nature, open to any person who chooses to go there, whether upon payment or gratuitously (*p*). The incidental or isolated use for music or dancing of a room which is not licensed is not a keeping of the room or house for that purpose within the meaning of the Disorderly Houses Act, 1751 (*a*). If dancing or music is an essential or integral part of the entertainment and forms an independent attraction, the house falls within the Act, but it is otherwise, if dancing or music is merely subsidiary to a general performance not within the Act (*b*).

Houses used for public entertainment on Sunday.

1103. Every house, room, or other place which is used for public entertainment or amusement, or for publicly debating on any subject whatever, upon any part of Sunday, and to which persons

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wife over to another man and that Lord Hardwicke directed a prosecution for that transaction as being notoriously and grossly against public decency and good manners. See now Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69).

(*k*) This, however, does not include any place within the administrative county of Middlesex, which county has a special Act, the Music and Dancing Licences (Middlesex) Act, 1894 (57 & 58 Vict. c. 15). By s. 2 (5) of this Act any place used for public dancing, singing, music or other public entertainment of the like kind and unlicensed by the county council is to be deemed a disorderly house, and the occupier is liable to a fine of £5 for every day during which it is so used. S. 2 (12) repeals the Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), ss. 2, 3, so far as relates to the administrative county of Middlesex.

(*l*) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (5).

(*m*) Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 2. Such person also forfeits £100 to anyone who may sue for it (*ibid.*). A penalty of £100 can only be recovered once, although the house may be kept open for severel days, but the offender, although he pays the penalty, is still liable to be indicted for keeping a disorderly house (*Garrett* v. *Messenger* (1867), L. R. 2 C. P. 583, 585); and the recovery of a judgment for the penalty by a nominal plaintiff in collusion with the defendant is no bar to a subsequent action (stat. (1489) 4 Hen. 7, c. 20; *Girdlestone* v. *Brighton Aquarium Co.* (1878), 3 Ex. D. 137; (1879) 4 Ex. D. 107, C. A.).

(*n*) *Ibid.* s. 4.

(*o*) *Green* v. *Botheroyd* (1828), 3 C. & P. 471.

(*p*) *Clark* v. *Searle* (1793), 1 Esp. 25; *Bellis* v. *Burghall* (1799), 2 Esp. 722; *Archer* v. *Willingrice* (1802), 4 Esp. 186; *Marks* v. *Benjamin* (1839), 5 M. & W. 565, 569.

(*a*) 25 Geo. 2, c. 36; *Shutt* v. *Lewis* (1804), 5 Esp. 128; *Marks* v. *Benjamin*, *supra*, at pp. 567, 569; *Syers* v. *Conquest* (1873), 28 L. T., 402.

(*b*) *Gregory* v. *Tavernor* (1833), 6 C. & P. 280; *Quaglieni* v. *Matthews* (1865), 6 B. & S. 474, 483; *R.* v. *Tucker* (1877), 2 Q. B. D. 417, 421, C. C. R.; and see *Hall* v. *Green* (1853), 9 Exch. 247.

are admitted by the payment of money, or by tickets sold for money, is to be deemed a disorderly house, and its keeper may be indicted as the law directs in the case of a disorderly house (*c*).

SUB-SECT. 5.—*Gaming Houses.*

Gaming houses.

1104. Everyone who keeps a common gaming house is guilty of a misdemeanour as a nuisance at common law (*d*). Offences, however, with regard to the keeping of such houses are more usually dealt with under the statutes passed for their suppression.

A common gaming house is a house or place kept or used for playing therein at any game of chance, or at any mixed game of chance and skill in which (1) a bank is kept by one or more of the players exclusively of the others; or (2) in which any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed or against whom the other players stake, play, or bet (*e*).

Any person who appears or acts as the master or as the person having the care, government, or management of any gaming house, is deemed to be the keeper thereof, and is liable to prosecution as such, although he is not in fact the real owner or keeper (*f*).

(*c*) Sunday Observance Act, 1780 (21 Geo. 3, c. 49), s. 1. The keeper also forfeits £200 for every day that the place is used as above mentioned to anyone who may sue for it (*ibid.*). As to the effect of a judgment in a collusive action under this statute, see *Girdlestone* v. *Brighton Aquarium Co.* (1878), 3 Ex. D. 137, 4 Ex. D. 107, C. A. By the Remission of Penalties Act, 1875 (38 & 39 Vict. c. 80), the Crown is empowered to mitigate in whole or in part any penalty, fine, or forfeiture imposed or recovered under the Sunday Observance Act, 1780, whether on indictment, summary conviction, or by action. The Sunday Observance Act, 1780, does not apply to a place duly registered for public worship in which no music but sacred music is performed, and where instructive discourses are delivered, even though payment is required for admission to reserved seats (*Baxter* v. *Langley* (1868), 38 L. J. (M. C.) 1). The Brighton Aquarium was held to be a place of entertainment and amusement within the meaning of this statute (*Terry* v. *Brighton Aquarium Co.* (1875), L. R. 10 Q. B. 306), even after music was discontinued and the reading-room closed on Sundays (*Warner* v. *Brighton Aquarium Co.* (1875), L. R. 10 Exch. 291). As to who is a "keeper" of the house within the meaning of the Act, see *Reid* v. *Wilson*, [1895] 1 Q. B. 315, C. A.; *Martin* v. *Benjamin*, [1907] 1 K. B. 64.

(*d*) 1 Hawk. P. C., c. 32, s. 6. See title GAMING AND WAGERING.

(*e*) *Jenks* v. *Turpin* (1884), 13 Q. B. D. 505, *per* A. L. SMITH, J., at p. 530. Another definition given by HAWKINS, J., in the same case at p. 516 is a house in which a large number of persons are invited habitually to congregate for the purpose of gaming; see also Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 2.

(*f*) Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 8. The statutory provisions are much more extensive than the common law remedy (Gaming Houses Act, 1854 (17 & 18 Vict. c. 38), s. 4; see also Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 4). Any person being the owner or occupier or having the use of any house, room, or place who opens, keeps, or uses it for the purpose of unlawful gaming, or wilfully permits it so to be opened or used by any other person, and any person having the care or management of or in any manner assisting in conducting the business of such a house, and any person advancing money for the purpose of gaming with persons frequenting the same, may on summary conviction be fined £500 and be committed to prison for twelve months. The defendant may elect to be tried on indictment (Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 17), and he must be informed of his right to be so tried; see *R.* v. *Beesby* (1909), 25 T. L. R. 337.

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It is not necessary to prove that any person found playing was then playing for any money. The fact that cards or other instruments of gaming are on the suspected premises is *primâ facie* evidence that the house was being used as a common gaming house, and that the persons found in the room or place where the instruments of gaming were found were playing there (*g*).

Gaming is not in itself unlawful at common law (*h*), but the fact that it is habitually carried on in a house kept for the purpose of gaming is strong evidence that the house is a common gaming house (*i*).

Unlawful games.

Unlawful gaming is either playing at any unlawful game or playing at any game in a common gaming house (*j*).

Unlawful games are ace of hearts, pharaoh (or faro), basset and hazard (*k*), passage, and every other game played with dice (except backgammon) (*l*), roulette (*m*), baccarat, and every game of cards which is not a game of mere skill, and probably every other game of mere chance (*n*).

All gaming, even at lawful games, if carried on at a common gaming house, is unlawful, and the keeper of the house is indictable (*o*).

Clubs etc. used for gaming.

1105. The occupier of the house and, in the case of a club, the members of the committee, if any, are liable to the penalties imposed by the Gaming Houses Act, 1854 (*p*), as having the care or management or assisting in conducting the business of the house. Ordinary players are not so liable, even if they take turns at keeping a bank (*q*); but a player who has bought the bank for the evening is a person assisting in the management (*r*).

A club which is kept for purposes of gaming, but at which only members are allowed to play, is none the less a common gaming house (*s*), but the occupier of a house in which gaming between friends is occasionally carried on cannot be said to use the house for gaming, and is not therefore indictable (*a*).

(*g*) Gaming Act, 1845 (8 & 9 Vict. c. 109), ss. 5, 8. As to the power of the police to search suspected places in the metropolis, see ss. 6, 7. The instruments of gaming may be ordered to be destroyed (*ibid.*, s. 8).

(*h*) Whether it becomes so if the stakes are excessive appears to be somewhat doubtful; see *R.* v. *Rogier* (1823), 2 Dow. & Ry. (K. B.) 431, 434, 436, and the observations of HAWKINS and SMITH, JJ., on that case in *Jenks* v. *Turpin* (1884), 13 Q. B. D. 505, at pp. 525, 532.

(*i*) *Jenks* v. *Turpin*, *supra*, at p. 525.

(*j*) *Jenks* v. *Turpin*, *supra*.

(*k*) Gaming Act, 1738 (12 Geo. 2, c. 28).

(*l*) Gaming Act, 1739 (13 Geo. 2, c. 19).

(*m*) Gaming Act, 1744 (18 Geo. 2, c. 34).

(*n*) *Jenks* v. *Turpin*, *supra*, at p. 524. The question whether a particular game is lawful or unlawful, or whether a house is used for unlawful gaming, is for the judge, not for the jury (*R.* v. *Davies*, [1897] 2 Q. B. 199, C. C. R.).

(*o*) *Jenks* v. *Turpin*, *supra*, at p. 531.

(*p*) 17 & 18 Vict. c. 38, s. 4; and see title CLUBS, Vol. IV., p. 435.

(*q*) *Jenks* v. *Turpin*, *supra*. The players may be indicted for unlawful gaming; see stat. 33 Hen. 8, c. 9, s. 14, and *Jenks* v. *Turpin*, *supra*, at p. 526.

(*r*) *Derby* v. *Bloomfield* (1904), 68 J. P. 391.

(*s*) *Jenks* v. *Turpin*, *supra*.

(*a*) *R.* v. *Davies*, [1897] 2 Q. B. 199, C. C. R.; see also *Lockwood* v. *Cooper* (1903), 72 L. J. (K. B.) 690.

To constitute the offence of keeping a common gaming house it is not necessary that the place should be principally used for the purpose of gaming. It is sufficient that gaming is shown to be habitually carried on there (*b*).

SUB-SECT. 6.—*Lotteries.*

Lotteries.

1106. A lottery is a distribution of prizes by lot or chance (*c*). To constitute a lottery the matter must depend entirely upon chance. If there is an element of skill, then the scheme is not a lottery, although the result may depend largely on chance (*d*).

All lotteries are declared by statute to be common and public nuisances (*e*), and the persons engaged in keeping them are guilty of misdemeanour, and are punishable on indictment with fine and imprisonment without hard labour (*f*).

(*b*) In *Fielding* v. *Turner*, [1903] 1 K. B. 867, a confectioner had in his shop an automatic machine; a person who put a penny into a slot in the machine might, on pulling a knob, by chance obtain either a ticket entitling him to sweets or nothing at all; it was held that the shop-keeper used his shop for the purpose of unlawful gaming within s. 4 of the Gaming Houses Act, 1854 (17 & 18 Vict. c. 38); see also *Thompson* v. *Mason* (1904), 68 J. P. 270; and *Jenks* v. *Turpin* (1884), 13 Q. B. D. 505.

(*c*) *Taylor* v. *Smetten* (1883), 11 Q. B. D. 207, 210.

(*d*) *Hall* v. *Cox*, [1899] 1 Q. B. 198, C. A.; see also *Caminada* v. *Hulton* (1891), 60 L. J. (M. C.) 116; *Stoddart* v. *Sagar*, [1895] 2 Q. B. 474. The following have been held to be lotteries:—Sales of goods with tickets for prizes of varying values (*R.* v. *Harris* (1866), 10 Cox, C. C. 352; *Taylor* v. *Smetten*, *supra*); free distribution by newspaper proprietors of medals bearing prize-winning numbers (*Willis* v. *Young and Stembridge*, [1907] 1 K. B. 448); "spot" competition in a newspaper (*Hall* v. *McWilliam* (1901), 20 Cox, C. C. 33); "missing word" competition (*Barclay* v. *Pearson*, [1893] 2 Ch. 154); distribution of prizes at an entertainment to occupiers of particular seats (*Morris* v. *Blackman* (1864), 2 H. & C. 912); a sweepstakes, whether the organiser derives profit from it or not (*Allport* v. *Nutt* (1845), 1 C. B. 974, 984; *Gatty* v. *Field* (1846), 9 Q. B. 431; *Mearing* v. *Hellings* (1845), 14 M. & W. 711; *R.* v. *Crawshaw* (1860), 8 Cox, C. C. 375; *Hardwick* v. *Lane*, [1904] 1 K. B. 204; and see *R.* v. *Hobbs*, [1898] 2 Q. B. 647, C. C. R.). The following have been held not to be lotteries:—Issue of prize coupons for the selection of winners of horse races (*Caminada* v. *Hulton* (1891), 60 L. J. (M. C.) 116; *Stoddart* v. *Sagar*, [1895] 2 Q. B. 474); offer of prize for correct prediction of numbers of births and deaths in London in a given week (*Hall* v. *Cox*, [1899] 1 Q. B. 198, C. A.). See also p. 550, *post*.

(*e*) Stat. (1698) 10 Will. 3, c. 23, s. 1.

(*f*) *R.* v. *Crawshaw* (1860), 8 Cox, C. C. 375. By the Act of William III., *supra*, the keeper of a lottery and the players are also liable to penalties of £500 and £20 respectively, to be recovered by action; see also as to such penalties, Lotteries Act, 1721 (8 Geo. 1, c. 2), ss. 36, 37; Gaming Act, 1738 (12 Geo. 2, c. 28), s. 3. It is also provided by statute that every person who publicly or privately keeps any office or place for carrying on any lottery not authorised by Parliament is to be deemed a rogue and vagabond, and is punishable as such. It is in this way that persons who hold lotteries are now usually dealt with (Gaming Act, 1802 (42 Geo. 3, c. 119), ss. 1, 2). The only lotteries now authorised by Parliament are those which may be carried on for the encouragement of the fine arts by art unions which may have been incorporated by royal charter or constituted under a deed and rules approved by the Privy Council (Art Unions Act, 1846 (9 & 10 Vict. c. 48)). As for other statutory provisions as to lotteries, see Lotteries Act, 1710 (9 Ann. c. 6), s. 57; Lotteries Act, 1721 (8 Geo. 1, c. 2), ss. 36, 37; Lotteries Act, 1722 (9 Geo. 1, c. 19), s. 4; Lotteries Act, 1732 (6 Geo. 2, c. 35), s. 29; Gaming Act, 1738 (12 Geo. 2, c. 28), ss. 3, 4; Gaming Act, 1802 (42 Geo. 3, c. 119), ss. 1—7; Lotteries Act, 1806 (46 Geo. 3, c. 148), s. 59; Lotteries Act, 1823 (4 Geo. 4, c. 60), ss. 19, 37—39, 41, 59, 60—62, 67; Lotteries

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A person cannot be convicted of keeping a place for the purpose of a lottery (*g*) in which on an isolated occasion tickets are drawn for a lottery (*h*).

A person who incites another to the keeping of a lottery, and knowingly supplies instruments or goods for that purpose, is punishable as an aider and abettor (*i*).

SUB-SECT. 7.—*Betting Houses.*

Betting.

1107. Betting is not in itself illegal (*j*), nor does it appear that a house established for carrying on a betting business is indictable at common law, unless it is so conducted as to be in fact a nuisance to the public. It is, however, provided by statute (*k*) that no house, office, room, or other place may be opened, kept, or used (1) for the purpose of the owner, occupier, or keeper thereof, or any person using the same or employed by or acting for or on behalf of such owner, etc., or of any person having the care or management or in any manner conducting the business, betting with persons resorting thereto; or (2) for the purpose of any money or valuable thing being received by such owner or other person as the consideration for any promise, express or implied, to pay money on the event of any horse race, or other race, fight, game, sport, or exercise, or to secure such payment by any other person.

Betting houses etc.

Every house, office, room, or other place so kept or used is declared to be a common nuisance and (*l*) a common gaming house within the meaning of the Gaming Act, 1845 (*m*).

Act, 1836 (6 & 7 Will. 4, c. 66), s. 1; Lotteries Act, 1845 (8 & 9 Vict. c. 74), ss. 3, 4. Penalties recoverable by summary proceedings are imposed on those who advertise or publish any proposal for a lottery, or who sell tickets in a lottery, whether English or foreign (Gaming Act, 1802 (42 Geo. 3, c. 119), s. 5; Lotteries Act, 1823 (4 Geo. 4, c. 60), s. 41; and see Lotteries Act, 1836 (6 & 7 Will. 4, c. 66), s. 1). There are similar provisions in the earlier Acts, as to which see *King* v. *Smith* (1791), 4 Term Rep. 414. A building society established after 25th August, 1894, is forbidden to cause or permit applicants for advances to ballot for precedence or in any way make the granting of an advance depend on any chance or lot (Building Societies Act, 1894 (57 & 58 Vict. c. 47), s. 12). The offence of keeping a lottery is triable at quarter sessions.

(*g*) *I.e.*, under the Gaming Act, 1802 (42 Geo. 3, c. 119), s. 2.

(*h*) *Martin* v. *Benjamin*, [1907] 1 K. B. 64; but the court suggested that the defendant might possibly have been convicted for selling lottery tickets under the Lotteries Act, 1823 (4 Geo. 4, c. 60), s. 41, or for keeping a lottery under 10 Will. 3, c. 23, s. 2.

(*i*) *Barratt* v. *Burden* (1893), 63 L. J. (M. C.) 33.

(*j*) See *Saxby* v. *Fulton*, [1909] 2 K. B. 208, 224, 227.

(*k*) Betting Act, 1853 (16 & 17 Vict. c. 119), s. 1.

(*l*) *Ibid.*, s. 2.

(*m*) 8 & 9 Vict. c. 109. Any person who, being the owner or occupier of any such house or place or a person using the same, opens or uses it for the above-mentioned purposes, and an owner or occupier who knowingly permits such use, and any person who has the care or management of or assists in conducting such a business therein, is liable to a fine of £100 or to six months' imprisonment with or without hard labour on summary conviction (Betting Act, 1853 (16 & 17 Vict. c. 119), s. 3). As to the right of a person prosecuted summarily to be tried by a jury, see Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 17. If any such person receives any money or valuable thing as a deposit on any bet upon a horse or any other race, or any fight, game, sport, or exercise, or as the consideration for a promise to pay money on such an event, he is liable on summary conviction to a penalty of £50, or to three

Every person engaged in keeping such a house is guilty of a misdemeanour and punishable by fine and imprisonment with or without hard labour, as well as by the alternative penalties provided by statute (*n*).

What is a "place."

1108. In order that a "place" may come within the above-mentioned provisions, it must be an ascertained place, where a man engaged in betting may, according to ordinary usage, be found by persons wishing to bet with him (*o*), and although it is not necessary that it should be covered in, nor that it should be actually defined by metes and bounds, there must be something definite and, for the time being, fixed, marking its situation, though not necessarily showing the character of the business carried on there (*p*).

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months' imprisonment with or without hard labour (*ibid.*, s. 4), and the deposit may be recovered back by the person paying it (s. 5). The Act does not extend to a person who receives money or a valuable thing by way of stakes or deposit to be paid to the winner of any race or lawful sport, game or exercise, or to the owner of any horse engaged in a race (*ibid.*, s. 6).

(*n*) *R.* v. *Crawshaw* (1860), 8 Cox, C. C. 375; Hard Labour Act, 1822 (3 Geo. 4, c. 114). The offence is triable at quarter sessions.

(*o*) *Powell* v. *Kempton Park Race Course Co.*, [1899] A. C. 143, 196.

(*p*) The words "or other place" in the Betting Act, 1853 (16 & 17 Vict. c. 119), s. 1, have given rise to a large number of cases, of which an abstract is given in this note. The following have been held to be "places" within the meaning of the section when used by persons habitually resorting there for the purpose of betting:—A stool at a racecourse covered with an unusually large and marked umbrella (*Bows* v. *Fenwick* (1874), L. R. 9 C. P. 339; *Brown* v. *Patch*, [1899] 1 Q. B. 892); a strip of ground separated from a racecourse by railings and containing temporary wooden roofless structures with desks (*Shaw* v. *Morley* (1868), L. R. 3 Exch. 137); a small wooden box used to stand upon in a railed inclosure on a grand stand at a racecourse (*Gallaway* v. *Maries* (1881), 8 Q. B. D. 275, the movable box affording the only distinction between that case and *Powell* v. *Kempton Park Race Course Co.*, *supra*); the bar-room of a publichouse, if used by a bookmaker for betting, and if he does so with the knowledge and consent of the publican (*R.* v. *Preedy* (1888) 17 Cox, C. C. 433; *Hornsby* v. *Raggett*, [1892] 1 Q. B. 20; *Belton* v. *Busby*, [1899] 2 Q. B. 380; *Tromans* v. *Hodkinson*, [1903] 1 K. B. 30; *R.* v. *Deaville*, [1903] 1 K. B. 468, C. C. R.; *R.* v. *Simpson*, [1903] 1 K. B. 473, C. C. R.); a piece of ground bounded by a hoarding and its stays, to which the defendant habitually went to bet (*Liddell* v. *Lofthouse*, [1896] 1 Q. B. 295); a piece of vacant ground known as the "Pit Heap," to which the public had access (*McInaney* v. *Hildreth*, [1897] 1 Q. B. 600, a case of perhaps doubtful authority, being very similar to *Hawke* v. *Dunn*, [1897] 1 Q. B. 579, overruled (see *infra*); this and similar doubtful cases will, however, now be met by the Street Betting Act, 1906 (6 Edw. 7, c. 43), s. 1 (see p. 551, *post*)); an archway forming a private thoroughfare (*R.* v. *Humphrey*, [1898] 1 Q. B. 875, C. C. R.); a garden at the back of a house (*R.* v. *Russell* (1905), 69 J. P. 247, C. C. R.); see also *Clark* v. *Dykes* (1906), 8 F. (Ct. of Justiciary) 43, and *Flannagan* v. *Hill* (1904), 7 F. (Ct. of Justiciary) 26.

The following have been held not to be "places" within the meaning of the section:—A clump of trees in Hyde Park under which the defendant stood daily for betting (*Doggett* v. *Catterns* (1865), 19 C. B. (N. S.) 765, Ex. Ch.; see now the Street Betting Act, 1906 (6 Edw. 7, c. 43), s. 1); a reserved portion of a field where dog races were being held, defendant having no stand or distinguishing mark (*Snow* v. *Hill* (1885), 14 Q. B. D. 588); a bar-room of a publichouse to which the defendant went on only three successive days for betting purposes (*Whitehurst* v. *Fincher* (1890), 62 L. T. 433; see the observations of MATHEW, J., on this case in *Hornsby* v. *Raggett*, *supra*); a railed inclosure at a racecourse to which the defendant and many other bookmakers and others resorted to bet, but used no stand or distinguishing umbrella (*Powell* v. *Kempton Park Race Course Co.*, *supra*, at p. 197, expressly overruling *Eastwood* v. *Miller* (1874), L. R. 9 Q. B. 440; *Haigh* v. *Sheffield*

SECT. 3. Offences against Decency and Morality.

Clubs.

A *bonâ fide* club, even though it may be intended that betting should be carried on in the club house between the members, but not with non-members, is not a house used for betting within the meaning of the above-mentioned provisions (*q*). But it is otherwise if the club consists partly of bookmakers and partly of members who go there to bet with such bookmakers and not with each other indiscriminately (*r*).

Newspaper coupons.

The office of a newspaper in which coupons are published entitling the purchasers of the newspaper to a prize for guessing the winners of a future horse race or game is a betting house within the meaning of the above-mentioned provisions, inasmuch as the newspaper proprietor undertakes to pay money on the event of such horse race or game (*s*).

Receiving money.

1109. To constitute a betting house it is not necessary that the money or bet should be received at such house, nor even within the United Kingdom; it is sufficient that the house is used for carrying on an essential part of the operations resulting in the payment of the money either there or elsewhere (*t*).

What is keeping a house for the purpose of betting.

1110. Keeping a house for the purpose of betting with persons resorting thereto and keeping a house for the purpose of receiving deposits on bets are two distinct offences (*a*). To support a charge of the first kind it is necessary to show that persons resorted to the house in person to bet. Evidence that betting was done by letters received there is insufficient; but it is not necessary to show that the persons resorting to the house paid or received bets there (*b*). Nor is a house or place a betting house, if it is only used for paying bets which have been made elsewhere (*c*).

But if the charge is that the house was kept for the purpose of receiving deposits on bets as the consideration of a promise to pay on a future event, or in other words for ready-money betting, evidence that such deposits were paid by letter is sufficient without proof of personal resort (*d*).

A house used for organising a sweepstakes is not a betting house within the meaning of the above-mentioned provisions (*e*).

Town Council (1874), L. R. 10 Q. B. 102, (in which, it may be observed, the bookmakers stood on chairs or stools); and *Hawke* v. *Dunn*, [1897] 1 Q. B. 579); see also *Wright* v. *Smith* (1903), 6 F. (Ct. of Justiciary) 18.

(*q*) *Downes* v. *Johnson*, [1895] 2 Q. B. 203.

(*r*) *R.* v. *Corrie* (1904), 68 J. P. 294, C. C. R.

(*s*) *R.* v. *Stoddart*, [1901] 1 K. B. 177; *Mackenzie* v. *Hawke*, [1902] 2 K. B. 216; *Lennox* v. *Stoddart*, [1902] 2 K. B. 21, C. A.; *Hawke* v. *Hulton* (1905), 22 T. L. R. 169.

(*t*) *Stoddart* v. *Hawke*, [1902] 1 K. B. 353; *Lennox* v. *Stoddart*, *supra*; and see *R.* v. *Stoddart* (1909), 25 T. L. R. 612, C. C. A.

(*a*) *Bond* v. *Plumb*, [1894] 1 Q. B. 169.

(*b*) *Ibid.*; *Davis* v. *Stephenson* (1890), 24 Q. B. D. 529; *R.* v. *Brown*, [1895] 1 Q. B. 119, C. C. R.; *R.* v. *Worton*, [1895] 1 Q. B. 227, C. C. R.

(*c*) *Bradford* v. *Dawson*, [1897] 1 Q. B. 307; see now the Street Betting Act, 1906 (6 Edw. 7, c. 43).

(*d*) *R.* v. *Stoddart*, [1901] 1 K. B. 177; see also the other authorities mentioned in notes (*s*) and (*t*), *supra*.

(*e*) *R.* v. *Hobbs*, [1898] 2 Q. B. 647, C. C. R.; but the sweepstakes is a lottery (see p. 547, note (*d*), *ante*).

SUB-SECT. 8.—*Betting in Streets.*

SECT. 3. Offences against Decency and Morality.

Street betting.

1111. Everyone is by statute (*f*) guilty of an indictable misdemeanour who frequents or loiters in streets or public places on behalf either of himself or of any other person for the purpose of bookmaking or betting or wagering, or agreeing to bet or wager, paying or receiving or settling bets, if such person has been twice previously summarily convicted (*g*).

The punishment for this offence on conviction on indictment is a fine of £50, or imprisonment with or without hard labour for six months without the option of a fine (*h*).

It is an offence punishable on summary conviction by a fine of £30, or imprisonment with or without hard labour, for two months to exhibit or publish any placard, handbill, card, writing, sign, or advertisement whereby it is made to appear that any house or place is kept or used for the purpose of making bets or wagers, or for exhibiting betting lists, or with intent to induce any person to resort there for the purpose of making bets or wagers, or to invite on behalf of the owner or occupier other persons to resort there to make bets (Betting Act, 1853 (16 & 17 Vict. c. 119), s. 7; see *Hawke* v. *Mackenzie* (Nos. 1 and 2), [1902] 2 K. B. 225; *Ashley and Smith, Ltd.* v. *Hawke* (1903), 67 J. P. 361); it is also an offence punishable in the same way for any person to send, exhibit, or publish any letter, circular, telegram, placard, handbill, card or advertisement whereby it is made to appear that any person, either within or without the kingdom, will give information or advice for the purpose of or with respect to any bet or wager or any such event or contingency as is mentioned in the Betting Act, 1853 (16 & 17 Vict. c. 119), or will make on behalf of any other person any such bet or wager as is mentioned in that Act; it is also an offence punishable in the same way to send etc. such letter etc. with intent to induce any person to apply to any house etc. with the view of obtaining information or advice for the purpose of any such bet etc., or to send such letter etc. inviting any person to make or take any share in or in connection with such bet etc. (Betting Act, 1874 (37 & 38 Vict. c. 15), s. 3; see *Hawke* v. *Mackenzie*, *supra*. This Act only applies to advertisements to give information or advice as to bets to be made in a betting house (*Cox* v. *Andrews* (1883), 12 Q. B. D. 126)). A justice of the peace, upon complaint on oath being made before him, may issue a search warrant authorising a constable to search any premises suspected of being used as a betting house, and all persons found therein and all lists or other documents relating to racing or betting may be brought before the justice (Betting Act, 1853 (16 & 17 Vict. c. 119), s. 11). In the metropolis the Commissioner of Police may authorise such a search (*ibid.*, s. 12). The persons arrested may be bound over under stat. (1541) 33 Hen. 8, c. 9, not to haunt such places in future (*Murphy* v. *Arrow*, [1897] 2 Q. B. 527).

(*f*) Street Betting Act, 1906 (6 Edw. 7, c. 43), s. 1. The offence is triable at quarter sessions.

(*g*) The defendant is liable on a first conviction to a fine not exceeding £10 and on a second conviction to a fine not exceeding £20 (*ibid.*).

(*h*) On summary conviction for the third offence the punishment is a fine of £30, or imprisonment with or without hard labour for three months (*ibid.*). For the purposes of this section "street" includes any highway and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not, and "public place" includes any public park, garden, or sea beach, and any uninclosed ground to which the public for the time being have unrestricted access, and every inclosed place (not being a public park or garden) to which the public have a restricted right of access, whether on payment or otherwise, if at every public entrance there is conspicuously exhibited by the owner or person having control of the place a notice prohibiting betting therein (*ibid.*, s. 1 (4)). Nothing contained in the Act applies to any ground used for the purpose of a racecourse or ground adjacent thereto on the days on which races take place (s. 2). As to the meaning of loitering, see *Dunning* v. *Swetman* (1909), 25 T. L. R. 302.

SECT. 3. Offences against Decency and Morality.

SUB-SECT. 9.—*Inviting Minors to Bet etc.*

Inviting infants to bet or borrow money.

1112. Everyone is by statute (*i*) guilty of a misdemeanour who, for the purpose of earning commission, interest, or reward, or other profit, sends to a person whom he knows to be an infant any circular, advertisement, letter, or other document which invites, or may reasonably be implied to invite, the person receiving it to make any bet or wager, or to take any share or interest in a betting or wagering transaction, or to apply to any person or at any place for information or advice for the purpose of any bet or wager, or for information as to any race, fight, game, sport or other contingency upon which betting is generally carried on, or which invites him to borrow money or to apply to any person or at any place for information or advice as to borrowing money.

The punishment for this offence is imprisonment for three months with or without hard labour or a fine of £100 or both (*k*).

If any such document is sent to any infant at any college, school, or other place of education the person sending or causing the document to be sent is to be deemed to have known that the person to whom it was sent was an infant, unless the sender proves that he had reasonable ground for believing the person to whom the document was sent to be of full age (*l*).

The same penalties are imposed upon a person who without the authority of a court solicits an infant to make an affidavit or statutory declaration for the purpose of or in connection with any loan (*m*).

SUB-SECT. 10.—*Offences relating to Burial or Cremation.*

Failure to bury.

1113. The person upon whom the duty of disposing of a dead body falls (*a*) is guilty of a common law misdemeanour, which is punishable by fine or imprisonment, if, having the means, he fails to discharge such duty (*b*).

Preventing burial etc.

1114. It is a misdemeanour at common law either to prevent a body from being buried (*c*), or to disinter it without lawful authority (*d*), whether for dissection or otherwise (*e*), or for an

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(*i*) Betting and Loans (Infants) Act, 1892 (55 Vict. c. 4), ss. 1, 2.

(*k*) *Ibid.* Upon summary conviction the punishment is imprisonment with or without hard labour for one month or to a fine of £20 or both.

(*l*) *Ibid.*, s. 3.

(*m*) *Ibid.*, s. 4 (these offences are triable at quarter sessions); see also title MONEY AND MONEY LENDERS.

(*a*) See title BURIAL AND CREMATION, Vol. III., p. 405.

(*b*) *R.* v. *Vann* (1851), 2 Den. 325; *R.* v. *Stewart* (1840), 12 Ad. & El. 773, 778. See also *Jenkins* v. *Tucker* (1788), 1 Hy. Bl. 90; *Ambrose* v. *Kerrison* (1851), 20 L. J. (C. P.) 135.

(*c*) It is a common law misdemeanour to detain a dead body, as, *e.g.*, upon a supposed claim for fees or a debt, and to refuse to deliver it to the executor or to bury it against his directions (*R.* v. *Scott* (1842), 2 Q. B. 248, n.). See *Williams* v. *Williams* (1882), 20 Ch. D. 659.

(*d*) *R.* v. *Gilles* (1818), Russ. & Ry. 366, n.; *R.* v. *Lynn* (1788), 2 Term Rep. 733; *R.* v. *Feist* (1858), Dears. & B. 590, 598. As to the right of the personal representatives of the deceased to permit an anatomical examination of the body, see Anatomy Act, 1832 (2 & 3 Will. 4, c. 75), ss. 7, 14; see also title MEDICINE AND PHARMACY.

(*e*) *R.* v. *Cundick* (1822), 1 Dow. & Ry. (M. C.) 356.

undertaker to whom a body is intrusted for burial to sell it for dissection (*f*).

Where disinterment has taken place without authority, it is no defence that it was done from a pious and laudable motive (*g*), or that the human remains were not disturbed or removed in an indecent and improper manner (*h*).

Exposing dead body.

1115. It is a misdemeanour to expose a dead body near the public highway where it may be seen by passers-by and in such a way as to shock public decency (*i*).

The punishment for the three last-mentioned misdemeanours is fine and imprisonment without hard labour (*k*).

Burning dead body.

1116. It is not in itself an offence against the law to burn a dead body provided that this is done decently and in such a way as not to cause a nuisance to persons passing along public roads or other places where they have a right to go (*l*).

Cremation Act, 1902.

Everyone is by statute (*m*) guilty of a misdemeanour who wilfully makes a false declaration or representation or signs or utters any false certificate with a view to procuring the burning of any human remains.

The punishment for this offence, in addition to any penalty which the offender may otherwise incur, is imprisonment with or without hard labour for two years (*a*).

Everyone is by statute (*b*) guilty of a misdemeanour who, with intent to conceal the commission or impede the prosecution of any offence, procures or attempts to procure the cremation of any body or makes any declaration or certificate under the Cremation Act, 1902 (*c*).

The punishment for this offence on conviction on indictment is penal servitude for not more than five or for not less than three years, or imprisonment with or without hard labour for not more than two years (*d*).

SUB-SECT. 11.—*Drunkenness.*

Punishment of habitual drunkard.

1117. Drunkenness in some circumstances is punishable by fine on summary conviction (*e*). There are, however, certain statutory

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(*f*) *R.* v. *Sharpe* (1857), Dears. & B. 160.
(*g*) *R.* v. *Jacobson* (1880), 14 Cox, C. C. 522.
(*h*) As to authorising disinterment, see title BURIAL AND CREMATION, Vol. III., p. 553.
(*i*) *R.* v. *Clark* (1833), 15 Cox, C. C. 171.
(*k*) These offences are triable at quarter sessions.
(*l*) *R.* v. *Price* (1883), 12 Q. B. D. 247, 256. Or unless it is done in such a way as to infringe the provisions of the Cremation Act, 1902 (2 Edw. 7, c. 8), for which see title BURIAL AND CREMATION, Vol. III., p. 575.
(*m*) Cremation Act, 1902 (2 Edw. 7, c. 8), s. 8 (2).
(*a*) *Ibid.*
(*b*) *Ibid.*, s. 8 (3).
(*c*) *Ibid.*, s. 8 (3).
(*d*) *Ibid.* These offences under the Cremation Act, 1902 (2 Edw. 7, c. 8), are, it seems, triable at quarter sessions.
(*e*) Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 12; Licensing Act, 1902 (2 Edw. 7, c. 28), s. 1; see title INTOXICATING LIQUORS.

SECT. 3. Offences against Decency and Morality.

provisions which enable a criminal habitual drunkard to be dealt with on indictment (*f*).

Indictment.

The indictment, after charging the offence, must state that the accused is a habitual drunkard. He is in the first instance arraigned for the offence; and if he pleads or is found guilty of the offence, the jury are to be charged to inquire whether he is a habitual drunkard. Unless evidence that the defendant is a habitual drunkard has been given before he is committed for trial, not less than seven days' notice must be given to the proper officer of the court by which he is to be tried that it is intended to charge habitual drunkenness in the indictment (*g*).

Sentence of detention.

1118. A person who commits any of the offences mentioned in the First Schedule to the Inebriates Act, 1898 (*h*), and who within the twelve months previous to such commission has been convicted summarily at least three times of any offences so mentioned, and who is a habitual drunkard, is liable on conviction on indictment (or, if he consents to be so dealt with, on summary conviction) to be detained in any certified inebriate reformatory for three years, but he cannot be sentenced to imprisonment in addition to detention (*i*). The offender must be informed that he has a right to be tried on indictment (*k*).

If a person convicted is over sixty years of age, and is liable to have a detention order under the Inebriates Act, 1898 (*l*), made against him, the court may, if they think fit, order him to be disqualified for a statutory old age pension for such period not exceeding ten years, as the court may direct (*m*).

SECT. 4.—*Offences affecting Public Health, Safety, and Convenience.*

SUB-SECT. 1.—*Unwholesome Provisions.*

Selling etc. unwholesome provisions.

1119. Everyone is guilty of a misdemeanour at common law (*n*) who knowingly exposes or sells in the way of his trade, or sends or brings to market or has in his possession with intent to sell for human food, articles of food or drink which are corrupt and unfit and dangerous for human food (*o*). Proceedings for

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(*f*) See p. 417, *ante*.

(*g*) Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 1. See *R.* v. *Prince* (1908), 1 Cr. App. Rep. 252.

(*h*) 61 & 62 Vict. c. 60. Namely, being found drunk in a highway or public place or on licensed premises; being guilty while drunk of riotous or disorderly behaviour in a highway or public place; being drunk while in charge of a carriage, horse, cattle or steam engine, or when in possession of loaded firearms; refusing to quit licensed premises when drunk; when drunk persisting in entering or in refusing to leave a passenger steamer.

(*i*) Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 2 (1); *Commissioner of Police* v. *Donovan*, [1903] 1 K. B. 895; *R.* v. *Briggs*, [1909] 1 K. B. 381, C. C. A.

(*k*) Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 2; Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 17. As to escape from inebriate reformatories, see Inebriates Act, 1898, ss. 11, 18, and the Regulations made under the Act.

(*l*) 61 & 62 Vict. c. 60.

(*m*) Old Age Pensions Act, 1908 (8 Edw. 7, c. 40), s. 3 (3).

(*n*) Or perhaps certain early statutes; see 4 Co. Inst. 261; 4 Bl. Com. 162.

(*o*) 4 Co. Inst. 261; *R.* v. *Dixon* (1814), 3 M. & S. 11; *R.* v. *Stevenson* (1862),

offences of this nature are, however, more commonly taken under the Public Health Act, 1875 (*p*), or the Sale of Food and Drugs Acts, 1875 and 1899 (*a*).

The punishment for this offence is fine and imprisonment with or without hard labour (*b*).

Injurious foods.

1120. Everyone is by statute (*c*) guilty of a misdemeanour who, after a previous summary conviction for the like offence, knowingly mixes, colours, stains, or powders any article of food with any ingredient or material so as to render it injurious to health, with intent that it may be sold in that state, or to sell it so mixed or coloured.

The punishment for this offence is imprisonment with or without hard labour for six months (*d*).

Nuisances.

1121. Many nuisances which affect the public generally are indictable. Offences of this character are dealt with in other parts of this work (*e*).

SUB-SECT. 2.—*Offences by Innkeepers.*

Offences by innkeepers.

1122. The keeper of an inn may by the common law be indicted and fined for a misdemeanour, as being guilty of a public nuisance, if he usually harbours thieves or persons of scandalous reputation, or suffers frequent disorders in his house (*f*).

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3 F. & F. 106; *R.* v. *Jarvis* (1862), 3 F. & F. 108; *R.* v. *Crawley* (1862), 3 F. & F. 109; *Burnby* v. *Bollett* (1847), 16 M. & W. 644, 654; *Shillito* v. *Thompson* (1875), 1 Q. B. D. 12.

(*p*) 38 & 39 Vict. c. 55. See title PUBLIC HEALTH ETC.

(*a*) 38 & 39 Vict. c. 63 and 62 & 63 Vict. c. 51. By the Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 116, 117, if any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk, is exposed for sale or deposited in any place for the purpose of sale or of preparation for sale and intended for the use of man, and appears to a medical officer of health or an inspector of nuisances to be diseased, unsound, unwholesome, or unfit for the food of man, such medical officer etc. may seize and carry away the same in order to have it dealt with by a justice; a justice may order the same to be destroyed, and the person to whom it belonged or in whose possession or on whose premises it was found is liable to a penalty of £20, or without the infliction of a fine to imprisonment for three months. See title FOOD AND DRUGS.

(*b*) See Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29; 2 Russell on Crimes, 455; 2 East, P. C. 822.

(*c*) Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 3, 5, 8.

(*d*) *Ibid.* The punishment for a first offence, upon summary conviction, is a fine of £50. By s. 4 similar penalties are imposed for knowingly mixing ingredients with drugs so as to affect injuriously their quality or potency. "Food" in the Food and Drugs Acts includes every article used for food or drink by man other than drugs or water, and also includes flavouring matters and condiments (Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 26). The accused is not liable to be convicted, if he shows to the satisfaction of the court that he did not know of the adulteration of the article of food or drug, and that he could not with reasonable diligence have obtained that knowledge (Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 5). Nothing contained in the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63) affects the power of proceeding by indictment (*ibid.*, s. 28). The forging or knowingly uttering for the purposes of the Act of any certificate or warranty is a misdemeanour punishable by imprisonment for two years with hard labour (*ibid.*, s. 27 (1)); and see p. 760, *post*. See also title FOOD AND DRUGS.

(*e*) See titles HIGHWAYS; NUISANCE; PUBLIC HEALTH.

(*f*) 1 Hawk. P. C., c. 32, s. 1 (I. 714), where it is also said to be indictable for

SECT. 4. **Offences affecting Public Health etc.**

If a person who keeps a common inn (*g*) refuses either to receive a traveller as a guest into his house, or to find him reasonably suitable victuals or lodging, he is not only liable in an action for damages, but is also guilty of a misdemeanour, and may be indicted and fined (*h*).

Refusing to receive travellers.

An innkeeper is not liable for such refusal if his inn is full (*i*), or if the person applying is not a traveller (*a*), or if he is drunken, violent, quarrelsome or disorderly, or a person whose presence on the premises would subject the innkeeper to a penalty under the Licensing Act, 1872, or if the innkeeper has some other reasonable ground for his refusal (*b*).

A person who sells intoxicating liquor or other refreshments, but who is not an innkeeper, is entitled to refuse to serve persons wishing to be customers, whether they are travellers or not (*c*).

Endangering railway passengers.

1123. There are various acts which are criminal when done with intent to, or which are likely to, endanger the safety of any person travelling or being upon a railway (*d*).

SECT. 5.—*Offences relating to Merchant Shipping.*

SUB-SECT. 1.—*Leaving Seamen behind.*

Leaving British seaman on shore.

1124. Any person belonging to a British ship is by statute (*e*) guilty of a misdemeanour who (1) wrongfully forces a seaman on shore and leaves him behind; or (2) otherwise causes him to be wrongfully left behind in any place, either on shore or at sea, in or out of the King's dominions.

The punishment for this offence is a fine, or imprisonment for two years with or without hard labour (*f*).

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an innkeeper to "take exorbitant prices." See further as to various offences by licensed victuallers, title INTOXICATING LIQUORS.

(*g*) *I.e.*, a house where a traveller is furnished with everything which he has occasion for whilst upon his way, but not necessarily stabling accommodation (*Thompson* v. *Lacy* (1820), 3 B. & Ald. 283, 286). See title INNS AND INNKEEPERS.

(*h*) 1 Hawk. P. C., c. 32, s. 2 (I. 714); *R.* v. *Ivens* (1835), 7 C. & P. 213. See *R.* v. *Sprague* (1899), 63 J. P. 233; *R.* v. *Smith* (1901), 65 J. P. 521.

(*i*) *Browne* v. *Brandt*, [1902] 1 K. B. 696.

(*a*) *R.* v. *Rymer* (1877), 2 Q. B. D. 136, C. C. R.; *Lamond* v. *Richard*, [1897] 1 Q. B. 541, C. A., where a person who was originally a traveller had ceased to be so when notice to quit was given to him.

(*b*) Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 18, and title INTOXICATING LIQUORS; *Pidgeon* v. *Legge* (1857), 21 J. P. 743; *R.* v. *Ivens, supra*; *R.* v. *Rymer, supra*, where the innkeeper was held to be justified in refusing because the person applying for entertainment insisted on bringing a large dog into the house. The innkeeper is probably entitled to require security for his charges or prepayment, but if he does not do so, but refuses to entertain the traveller for some other reason than that he has no such security, he will probably be held to have waived his right to require it (see 1 Hawk. P. C., c. 32, s. 2 (I., 714); *R.* v. *Ivens, supra*; *Fell* v. *Knight* (1841), 8 M. & W. 269).

(*c*) *R.* v. *Rymer, supra*. But if any holder of a licence to sell intoxicating liquors persistently and unreasonably refuses to supply suitable refreshment (other than intoxicating liquor) at a reasonable price, this is a good ground for depriving him of his licence (Licensing Act, 1904 (4 Edw. 7, c. 23), s. 9).

(*d*) See further as to the obstruction of and malicious injury to railways, trains, and telegraphs, pp. 786, 787, *post*.

(*e*) Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), s. 43.

(*f*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 680 (1), (a) (the Act of

SECT. 5. **Offences relating to Merchant Shipping.**

Discharging seamen etc.

1125. A master of a British ship is by statute (*g*) guilty of a misdemeanour (1) who, without having obtained the sanction of the proper authority (*h*), discharges a seaman (*i*), or leaves him behind (*k*), except at a port in the country in which he was shipped; or (2) who delivers a false account (*l*) or makes a false statement (*m*) to the proper officer (*n*) as to the wages and effects of any seaman who is left behind out of the British Isles.

The punishment for this offence is a fine, or imprisonment for not more than two years with or without hard labour (*o*).

SUB-SECT. 2.—*Fraud in Relation to Shipping Documents.*

Improper use of certificate of registry.

1126. The master or owner of a ship is by statute (*p*) guilty of a misdemeanour if he uses or attempts to use for her navigation a certificate of registry not legally granted in respect of the ship.

1906 is an amending Act, and is to be construed as one with the Act of 1894 (s. 86 (1)). Any offence declared by the Merchant Shipping Act, 1894, to be a misdemeanour, and in respect of which no specific punishment is assigned, is punishable as above stated (*ibid.*, s. 680). Such offences (except the offence of sending an unseaworthy ship to sea) may, however, be prosecuted summarily under the Summary Jurisdiction Acts, and if so prosecuted are punishable only by imprisonment for six months (*ibid.*). Offences against the Act punishable by imprisonment for not exceeding six months, or by a fine not exceeding £100, must be prosecuted summarily (*ibid.*, s. 680 (1) (b)). There can be no summary conviction in any proceeding instituted in the United Kingdom unless the proceeding is commenced within six months after the offence, or, if both or either of the parties happen during that time to be out of the United Kingdom, unless it is commenced within two months after they both first arrive or are at one time within the kingdom (*ibid.*, s. 683; and see *Austin* v. *Olsen* (1868), L. R. 3 Q. B. 208). But the defendant has, under the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 17, a right to claim to be tried by a jury in all cases where he may on summary conviction be sentenced to more than three months' imprisonment, and he should be so informed (*R.* v. *Goldberg*, [1904] 2 K. B. 866). See *R.* v. *Beesby*, [1909] 1 K. B. 849. As to venue and jurisdiction, see p. 285, *ante*; as to costs, see p. 445, *ante*. There are several sections in the Merchant Shipping Act, 1894, providing for fines of £500 under the Act. Such fines may be recovered by action, and the offences are not criminal, see ss. 73, 447, 452, and title SHIPPING AND NAVIGATION. As to the conveyance of the offender to the United Kingdom or a British possession, see s. 689; as to evidence taken abroad, see s. 691. The offences under the Merchant Shipping Act, 1894, *supra*, referred to in these sub-sections, are triable at quarter sessions.

(*g*) Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), ss. 28 (10), 30, 36.

(*h*) The proper authority is defined *ibid.*, s. 49.

(*i*) The sanction of the proper authority is to be indorsed on the agreement with the crew. This sanction is not to be refused where the seaman is discharged on the termination of his service (*ibid.*, s. 30).

(*k*) The sanction in this case takes the form of a certificate, which must state the cause for which the seaman is left behind, whether the cause be unfitness, or inability to proceed to sea, desertion, disappearance, or otherwise. No such sanction or certificate is required where the seaman is discharged in accordance with the Merchant Shipping Acts (*i.e.*, the Merchant Shipping Acts, 1894 to 1906) (*ibid.*, s. 36).

(*l*) Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), s. 28 (1) (b).

(*m*) *Ibid.*, s. 28 (3).

(*n*) *Ibid.*, s. 28 (11).

(*o*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 680; and see p. 556, note (*f*), *ante*.

(*p*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 16.

SECT. 5. Offences relating to Merchant Shipping.

The punishment is fine or imprisonment for two years with or without hard labour (*q*).

SUB-SECT. 3.—*Misconduct of Mariners.*

Misconduct endangering ship.

1127. Any master, seaman, or apprentice belonging to a British ship is by statute (*a*) guilty of a misdemeanour who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, (1) does any act tending to the immediate loss or serious damage of the ship, or tending immediately to endanger the life or limb of a person belonging to or on board of her; or (2) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the ship from immediate loss or serious damage, or for preserving any person belonging to or on board of her from immediate danger to life or limb.

The punishment is by statute fine or imprisonment for not more than two years with or without hard labour (*b*).

The same misconduct by a pilot when in charge of a ship is also a misdemeanour (*c*) punishable in the same way (*d*).

Taking money for apprenticeship in the sea-fishing service.

1128. Any person is guilty of a misdemeanour (*e*) who receives any money or valuable consideration from the person to whom an apprentice in the sea-fishing service is bound, or to whom a sea-fishing boy is bound by any agreement, or from the apprentice or boy or anyone on his behalf in consideration of his being so bound, or who makes any such payment.

The punishment for this offence is a fine or imprisonment for not more than two years with or without hard labour (*f*).

Failure of master to help in collision.

1129. In every case of collision between two vessels it is the duty of the master or person in charge of each vessel, so far as he can do so without danger to his own vessel, crew and passengers, to render to the other vessel, her crew and passengers, such assistance as may be practicable and may be necessary to save them from danger caused by the collision and to stay by the other vessel until he has ascertained that she has no need of further assistance, and also to give to the master or person in charge of the other vessel

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(*q*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 680. Also the ship is subject to forfeiture (s. 16); and see p. 556, note (*f*), *ante*. As to forgery of documents under the Merchant Shipping Act, 1894, see p. 752, *post*.

(*a*) *Ibid.*, s. 220. It is not necessary to prove that the wrongful act or omission was followed by loss, destruction, or damage (*R.* v. *Gardner* (1859), 1 F. & F. 669).

(*b*) *Ibid.*, s. 680; and see p. 556, note (*f*), *ante*. Desertion by seamen and absence without leave are punishable summarily, the former by twelve and the latter by ten weeks' imprisonment and the forfeiture of wages (*ibid.*, s. 221). For a number of other offences against discipline punishable on summary conviction, see s. 225; and as to misconduct by seamen serving on fishing boats, see s. 376.

(*c*) *Ibid.*, s. 607.

(*d*) *Ibid.*, s. 680, and see p. 556, note (*f*), *ante*.

(*e*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 398. This section applies only to service in fishing boats of a tonnage of twenty-five tons and upwards; see the words prefixed to s. 392 of the Act.

(*f*) *Ibid.*, s. 680; and see p. 556, note (*f*), *ante*.

the name of his own vessel and of the port to which she belongs; and the names of the ports from which she comes, and to which she is bound (*g*).

If the master or person in charge fails to do any of the things prescribed above without reasonable cause, he is by statute (*g*) guilty of a misdemeanour.

The punishment is fine, or imprisonment for not more than two years with or without hard labour (*h*).

Preventing escape from wreck.

1130. Any person is by statute (*i*) guilty of felony who unlawfully and maliciously prevents or impedes any person, being on board of or having quitted any ship or vessel in distress or wrecked, stranded, or cast on shore, in his endeavour to save his life or the life of any other person endeavouring to escape.

The punishment is penal servitude for life, or for not less than three years, or imprisonment with or without hard labour for not more than two years (*k*).

Assaulting person engaged in preserving wrecked vessel.

1131. Every person is by statute (*l*) guilty of a misdemeanour who assaults and strikes or wounds any magistrate, officer, or other person whatsoever lawfully authorised, in the exercise of his duty in the preservation of any vessel in distress or of any vessel, goods, or effects stranded or cast on shore or lying under water.

The punishment for this offence is penal servitude for not more than seven or for not less than three years, or imprisonment with or without hard labour for not more than two years (*m*).

Sending unseaworthy ship to sea.

1132. If any person sends or attempts to send or is party to sending or attempting to send a British ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered, he is by statute (*n*) guilty of a misdemeanour, unless he

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(*g*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 422. As to the application of this section to collisions with foreign vessels, see s. 424. A person is "in charge" who has the control of the ship at any time when assistance could have been rendered, and not merely at the time of the collision (*Ex parte Ferguson* (1871), L. R. 6 Q. B. 280, 287). If a pilot is on board, the master is none the less the "person in charge" (*The Queen* (1869), L. R. 2 A. & E. 354, 355). Whether the principle that a tug and its tow are to be considered as one vessel will render the person in charge of the tug criminally responsible if he does not stand by his tow and a vessel with whom she has come into collision appears doubtful (see *The Hannibal* (1867), L. R. 2 A. & E. 53).

(*h*) *Ibid.*, s. 680; and see p. 556, note (*f*), *ante*.

(*i*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 17.

(*k*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*l*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 37. A person who without leave of the master boards any vessel wrecked, stranded, or in distress, unless he is, or acts by command of, a receiver of wreck, is liable to a fine of £50. A person who impedes or hinders the saving of any such vessel or her cargo, or secretes any wreck or obliterates any mark thereon, or wrongfully carries away any part of the vessel or cargo, is also liable to a fine of £50 in addition to any other punishment to which he may be liable (Merchant Shipping Act (*supra*), s. 536). The offence is triable at quarter sessions.

(*m*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 37.

(*n*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 457. This section does not apply to a ship exclusively employed in trading or going from place to place in any river or inland water which is wholly or partly in a British possession (*ibid.*, s. 457 (5)). This offence cannot be prosecuted summarily

SECT. 5. Offences relating to Merchant Shipping.

proves that he used all reasonable means to ensure her being sent to sea in a seaworthy state, or that her going in an unseaworthy state was under the circumstances reasonable and justifiable.

If a master of a British ship knowingly takes the same to sea in such an unseaworthy state, he is by statute guilty of a misdemeanour (*o*), unless he proves that her going to sea in such a state was in the circumstances justifiable.

The punishment for this offence is fine, or imprisonment for not more than two years with or without hard labour (*p*).

Preventing service of documents.

The owner or master of a ship is by statute (*q*) guilty of a misdemeanour, if he is party or privy to obstructing the service on the master of a ship of any document under the provisions of the Merchant Shipping Act, 1894 (*a*), relating to detention of unseaworthy ships. The punishment for this offence is fine, or imprisonment with or without hard labour for not more than two years (*b*).

A prosecution for this offence cannot (except in Scotland) be instituted without the consent of the Board of Trade or of the governor of the British possession in which the prosecution takes place (*c*).

Forging salvage document etc.

1133. A person is by statute (*d*) guilty of a misdemeanour who in any proceeding under the provisions of the Merchant Shipping Act, 1894, relating to salvage by His Majesty's ships forges any document or utters it knowing it to be forged, or who gives, makes, or procures any false evidence or representation knowing it to be false.

The punishment is imprisonment for two years (*e*).

Disobedience to order of lighthouse, authority to extinguish misleading lights.

1134. Whenever any fire or light is burnt or exhibited at such places and in such manner as to be liable to be mistaken for a light proceeding from a lighthouse the general lighthouse authority within whose area the place is situate may serve a notice upon the owner of the place where the fire or light is burnt or exhibited, or on the person having charge of the fire or light, directing that owner or person within a reasonable time, to be specified in the notice, to take effectual means for extinguishing or screening the fire or light and for preventing in the future any similar fire or light.

Failure to comply with notice.

1135. Any person upon whom such a notice is served, who fails without reasonable cause to comply with such directions, is by statute guilty of a misdemeanour and may be indicted for a common nuisance (*f*).

(*ibid.*, s. 547 (5)). The indictment need not allege that the defendant knew the ship to be unseaworthy (*R.* v. *Freeman* (1875), 9 I. R. C. L. 527, C. C. R.). As to what amounts to seaworthiness, see *Hedley* v. *Pinkney & Sons Steamship Co.*, [1894] A. C. 222; *The Diamond*, [1906] P. 282.

(*o*) See previous note.

(*p*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 680; and see p. 556, note (*f*), *ante*.

(*q*) *Ibid.*, s. 696 (2).

(*a*) 57 & 58 Vict. c. 60.

(*b*) *Ibid.*, s. 680.

(*c*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 457 (3).

(*d*) *Ibid.*, s. 564, and see p. 754, *post*.

(*e*) *Ibid.*; or on summary conviction to imprisonment for six months.

(*f*) *Ibid.*, s. 667 (3). The general lighthouse authority in England and Wales, the Channel Islands and the adjacent seas and islands, and at Gibraltar,

The punishment for this offence is imprisonment without hard labour, and a fine of £100 in addition (*g*).

SUB-SECT. 4.—*Seal Fisheries.*

Offences against Behring Sea Award Act.

1136. Any person is by statute (*h*) guilty of a misdemeanour who commits, procures, aids, or abets any contravention of the Behring Sea Award Act, 1894, which statute incorporates certain provisions of the Behring Sea Arbitration Award dated the 15th August, 1893.

The punishment for this offence is a fine, or imprisonment with or without hard labour (*i*).

Forging licence.

1137. It is by statute (*k*) a misdemeanour to forge or fraudulently alter a licence or other document issued for the purpose of articles 4 or 7 of that award, or to procure any such licence or document to be forged or fraudulently altered or, knowing it to be forged or fraudulently altered, to use the same.

The punishment is a fine, or imprisonment with or without hard labour (*l*).

Offence against Seal Fisheries (North Pacific) Act.

1138. The King may by Order in Council prohibit during the period specified by the order the catching of seals by British ships in such parts of the North Pacific Ocean as are mentioned in the order. Any person belonging to a British ship is guilty of a

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is the Trinity House; throughout Scotland and the adjacent seas and islands and the Isle of Man, the Commissioners of Northern Lighthouses; throughout Ireland and the adjacent seas and islands, the Commissioners of Irish Lights (Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 634).

(*g*) *Ibid.*, s. 667 (3).

(*h*) Behring Sea Award Act, 1894 (57 Vict. c. 2), s. 1 (2); and see Sched. II. The offence is a misdemeanour "within the meaning of the Merchant Shipping Act, 1854" (17 & 18 Vict. c. 104); see s. 518 of the last-named Act and Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 745 (1) (*f*). The provisions of the award which are incorporated by this Act are set out verbatim in Sched. I. The killing at any time of fur-seals within a zone of sixty miles round the Pribiloff Islands, or elsewhere in the Pacific Ocean within certain prescribed limits, between 1st May and 31st July, is forbidden. There are other provisions as to licences for seal fishing and the method in which the fishing is to be conducted. As to the personal liability of the master of a vessel employed in the fishery for acts done by persons on board the vessel, see s. 4 of the Act. S. 3 enables the Sovereign to make Orders in Council for carrying into effect the provisions of the Act and award, and imposes a penalty of £100 for every breach of such an order. Orders in Council were made under this Act on 30th April, 1894, and 2nd February, 1895.

(*i*) Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 51 (1). If prosecuted summarily the offence is punishable with six months' imprisonment, or a fine of not more than £100 (*ibid.*, s. 518 (2)). The ship employed in such contravention, and her equipment and everything on board, is liable to be forfeited to the Crown, but the court may release her on payment of a fine not exceeding £500 (Behring Sea Award Act, 1894 (57 Vict. c. 2), s. 1 (2); and see Sched. II.).

(*k*) Behring Sea Award Act, 1894 (57 Vict. c. 2), s. 1 (4). The articles above mentioned are set out in Sched. I. to the Act.

(*l*) *Ibid.*, Sched. II.; Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 518. The offence may also be punished summarily by imprisonment for not exceeding six months or a penalty of £100.

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misdemeanour (*m*) who (1) kills, takes or hunts, or attempts to kill or take, any seal during the period and within the seas specified in such order; or (2) uses a British ship or her equipment or crew for such a purpose.

The punishment is a fine, or imprisonment for two years with or without hard labour (*n*).

The ship and her equipment and everything on board are subject to forfeiture to the Crown (*o*).

SECT. 6.—*Offences relating to Trade.*

SUB-SECT. 1.—*Unlawful Combination.*

Spreading false rumour.

1139. The offences of engrossing, forestalling, and regrating have been abolished by statute (*p*), but everyone is still guilty of a misdemeanour (*q*) (1) who knowingly spreads or conspires to spread any false rumour with intent to enhance or decry the price of any goods or merchandise (*a*) or the price of stocks (*b*); (2) who prevents or endeavours to prevent by force or threats any goods, wares, or merchandise being brought to any fair or market.

The punishment for this offence is fine and imprisonment with or without hard labour (*c*).

Stock Exchange.

1140. A combination for the making of purchases or sales upon the Stock Exchange, where the sole object of the transaction is to cheat and mislead the public by what is called "making a market," is an illegal conspiracy and constitutes an indictable misdemeanour (*d*).

(*m*) Seal Fisheries (North Pacific) Act, 1895 (58 & 59 Vict. c. 21), s. 1. The offence is declared to be a misdemeanour "within the meaning of the Merchant Shipping Act, 1894" (57 & 58 Vict. c. 60). The punishment is therefore that which is imposed by that statute; see next note. An Order in Council was made under this Act on the 21st November, 1895, prohibiting the catching of seals within ten marine miles of all the Russian coasts of Behring Sea and the North Pacific Ocean and within thirty miles of the Kormandorsky Islands and Robben Island. As to the establishment of a close season for seals in the seas adjacent to the east coast of Greenland, see Seal Fishery Act, 1875 (38 Vict. c. 18), and Order in Council dated 28th November, 1876.

(*n*) Seal Fisheries (North Pacific) Act, 1895 (58 & 59 Vict. c. 21), s. 1; Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 680.

(*o*) Seal Fisheries (North Pacific) Act, 1895 (58 & 59 Vict. c. 21), s. 1 (3).

(*p*) Stat. (1844) 7 & 8 Vict. c. 24, s. 1.

(*q*) *Ibid.*, s. 4. This Act was repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict. c. 19), but the repeal will not revive the offences which it abolished, or affect those which were preserved by the proviso in s. 4 (Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 38).

(*a*) *R.* v. *Hilbers* (1816), 2 Chit. 163. Before the stat. (1844) 7 & 8 Vict. c. 24 it appears to have been immaterial whether the rumours spread were true or false if they were put about with the view of enhancing the market price of goods (*R.* v. *Waddington* (1800), 1 East, 143). Having regard to the terms of s. 4, it is clear that it is only the spreading of false rumours which is now punishable.

(*b*) *R.* v. *De Berenger* (1814), 3 M. & S. 67; see *R.* v. *Gurney* (1869), 11 Cox, C. C. 414, 440.

(*c*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29.

(*d*) *Scott* v. *Brown, Doering, McNab & Co.*, [1892] 2 Q. B. 724, 727, 730,

SECT. 6. Offences relating to Trade.

Trade combinations.

1141. Subject to what is hereafter stated as to acts or combinations which occur during the course of a trade dispute between an employer and his workmen, it is an indictable misdemeanour, punishable by fine or imprisonment, for persons to combine together to prevent a man from carrying on his trade and so to impoverish him (*e*). But if the combination and the acts done in pursuance of it are mere acts of trade competition and intended to further the rival trade of the persons combining, and the acts are not in themselves unlawful, they do not afford ground for or an indictment (*f*).

An act done by one person which is not unlawful in itself is not indictable merely because it prejudices or interferes with the trade of another person, or prevents him from carrying on such trade, or because the person committing the act is influenced by malicious or bad motives (*g*). But an act may be criminal if done by two persons in agreement which would not be criminal if done by either of them alone (*h*).

The principles stated above are not confined to conspiracies in restraint of trade. Any conspiracy to do that which is either contrary to law or which is a wrongful and harmful act towards another person, and so an infringement of his civil rights, is a misdemeanour and indictable (*a*).

SUB-SECT. 2.—*Disputes between Employers and Workmen.*

Trade disputes.

1142. In the case of trade disputes the law as above stated has been modified by statute.

An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute is not indictable as a conspiracy, if such act, if committed by one person, would not be punishable as a crime (*b*).

This provision does not exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament and does not affect the law relating to riot,

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C. A.; see also *R.* v. *Aspinall* (1876), 2 Q. B. D. 48, 59; and see title STOCK EXCHANGE.

(*e*) *R.* v. *Eccles* (1783), 1 Leach, 274. As to this case, see Wright on Criminal Conspiracies, p. 45, and *Mogul Steamship Co.* v. *McGregor, Gow & Co.* (1889), 23 Q. B. D. 598, C. A., at p. 632, and Lord BRAMPTON in *Quinn* v. *Leathem*, [1901] A. C. 495, 530; in the last-mentioned case the House of Lords held that a combination, without justification or excuse, to injure a man in his trade by inducing his customers not to deal with him is actionable, if it results in damage to him. See title TRADE AND TRADE UNIONS.

(*f*) See *Mogul Steamship Co.* v. *McGregor, Gow & Co.*, [1892] A. C. 25; *Boots* v. *Grundy* (1900), 82 L. T. 769. These offences are not triable at quarter sessions.

(*g*) See *Bradford Corporation* v. *Pickles*, [1895] A. C. 587, 594; *Allen* v. *Flood*, [1898] A. C. 1, 139, 152, 153, where the earlier cases are fully stated; and see *Quinn* v. *Leathem*, *supra*.

(*h*) See *R.* v. *Warburton* (1870), L. R. 1 C. C. R. at p. 276.

(*a*) *R.* v. *Rowlands* (1851), 17 Q. B. 671; *R.* v. *Warburton* (1870), L. R. 1 C. C. R. 274; *Quinn* v. *Leathem*, *supra*, at pp. 528, 529.

(*b*) Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 3.

SECT. 6. Offences relating to Trade.

unlawful assembly, breach of the peace, sedition, or any offence against the State or Sovereign (*c*).

The word "crime" in this connection means an offence punishable on indictment, or an offence punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

Trade unions.

The purposes of a trade union are not, by reason merely that they are in restraint of trade, deemed to be unlawful so as to render any member of the trade union liable to criminal prosecution for conspiracy or otherwise (*d*). A trade union means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the Trade Union Act, 1871 (*e*), had not been passed, have been deemed to have been an unlawful combination as being in restraint of trade (*f*).

SUB-SECT. 3.—*Criminal Breach of Contract: Intimidation.*

Statutory misdemeanours

1143. Although the provisions of the law of conspiracy have been relaxed in favour of those engaged in trade disputes, nevertheless everyone is guilty of a misdemeanour (*g*), who (*h*), being a person employed by a municipal authority, or by any company or contractor upon whom an Act of Parliament has imposed or who have themselves assumed the duty of supplying any city, borough, town or place or any part thereof with gas or water, wilfully and maliciously (*i*) breaks a contract of service with such authority

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(*c*) Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86). As to the limit of punishment on a conviction for conspiracy to do an act punishable only on summary conviction, see *ibid.* Acts of this kind which are not indictable under this statute are not now indictable at common law (*Connor* v. *Kent*, *Gibson* v. *Lawson*, [1891] 2 Q. B. 545, 560). In the Trade Union Acts, 1871 to 1906 (34 & 35 Vict. c. 31, 39 & 40 Vict. c. 22, 6 Edw. 7, c. 47), and in the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), "trade dispute" means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or with the terms of the employment or with the conditions of labour of any person; the term "workmen" means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises (Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 5). See, generally, title TRADE AND TRADE UNIONS.

(*d*) Trade Union Act, 1871 (34 & 35 Vict. c. 31), s. 2.

(*e*) 34 & 35 Vict. c. 31.

(*f*) Trade Union Act Amendment Act, 1876 (39 & 40 Vict. c. 22), s. 16.

(*g*) Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), ss. 4, 5, 7. Nothing in the Act applies to seamen or apprentices to the sea service (*ibid.*, s. 16). As to misconduct by and ill-treatment of such persons, see pp. 556, 558, *ante*, and p. 608, *post*.

(*h*) *Ibid.*, s. 4.

(*i*) An offence is committed maliciously within the meaning of this Act, whether the offence is committed from malice conceived against the person in respect of which it is committal or otherwise (Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 15; Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 58).

etc. knowing or having reasonable cause to believe that the probable consequences of his so doing will be to deprive the inhabitants wholly or to a great extent of their supply of gas or water; or (2) who (*k*) wilfully and maliciously (*l*) breaks a contract of service or of hiring knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury (*m*); (3) who (*n*), with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing (*o*), wrongfully and without legal authority, uses violence to or intimidates (*p*) such other person or his wife or children or injures his property (*q*), or persistently follows such other person about from place to place (*r*), or hides any clothes, tools, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof, or watches or besets the house or other place where such other person resides or works or carries on business or happens to be or the approach to such house or place (*s*), or follows such other person with two or more other persons in a disorderly manner in or through any street or road (*t*).

The punishment for any such offence is a fine not exceeding £20,

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(*k*) Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 5.

(*l*) See note (*i*), on p. 564, *ante*.

(*m*) Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 16), s. 5.

(*n*) Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 7.

(*o*) The particular act must be specified in the summons and conviction (*R.* v. *McKenzie*, [1892], 2 Q. B. 519).

(*p*) The word "intimidates" probably means by threats of personal violence only. It, at any rate, does not include a threat to bring about a strike (*Curran* v. *Treleaven*, [1891] 2 Q. B. 545, 550, 562). But a threat to picket has been held to be intimidation within the meaning of the Act (*Judge* v. *Bennett* (1887), 52 J. P. 247, *per* STEPHEN and A. L. SMITH, JJ.; see the observation of MATHEW, J., on this case in *Curran* v. *Treleaven*, *supra*, at p. 550); see also *Peto* v. *Apperley* (1891), 35 Sol. Jo. 792; *Haile* v. *Lillingstone* (1891), *ibid.*; *Trollope & Sons* v. *London Building Trades Federation* (1895), 72 L. T. 342, C. A.

(*q*) The summons and conviction must specify the property injured (*Smith* v. *Moody*, [1903] 1 K. B. 56).

(*r*) *Ex parte Wilkins* (1895), 64 L. J. (M. C.) 221; *Smith* v. *Thomasson* (1890), 54 J. P. 596.

(*s*) It is, however lawful for one or more persons acting on their own behalf, or on behalf of a trade union or of an individual employer or firm, in contemplation or furtherance of a trade dispute to attend at or near such a house or place, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working (Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 2). The following cases were decided before this Act, and their authority has been affected by it:—*J. Lyons & Sons* v. *Wilkins* [1896] 1 Ch. 811, C. A.; *J. Lyons & Sons* v. *Wilkins* [1899] 1 Ch. 255, C. A.; *Charnock* v. *Court*, [1899] 2 Ch. 35; *Walters* v. *Green*, [1899] *ibid.*, 696). It is not essential that the persons who happen to be in the place beset should at the time be in the service or employment of any other person, and a depôt ship for seamen awaiting engagement has been held to be a place within the meaning of the section (*Farmer* v. *Wilson* (1900), 69 L. J. (Q. B.) 496).

(*t*) As to following, see *Ex parte Wilkins* and *Smith* v. *Thomasson*, *supra*.

SECT. 6. Offences relating to Trade.

or imprisonment with or without hard labour for not more than three months (*a*).

SUB-SECT. 4.—*Truck Act.*

Truck Act.

1144. An employer of any artificer in any of certain trades is by statute (*b*) guilty of a misdemeanour who directly or indirectly enters into any contract or makes any payment thereby declared illegal after having been twice previously convicted summarily of such offence (*c*).

The punishment is a fine of £100 (*d*).

SUB-SECT 5.—*Forging etc. Trade Marks.*

Merchandise Marks Act.

1145. Every person is by statute (*e*) guilty of a misdemeanour (1) who (*f*) forges (*g*) a trade mark (*h*); or (2) falsely applies (*i*) to

(*a*) Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), ss. 4, 5, 7. The punishment is the same whether the offence is prosecuted summarily or on indictment (*ibid.*, s. 9). The offence is only punishable on indictment if the accused objects to be tried before a court of summary jurisdiction (*ibid.*). This offence and the one next mentioned are triable at quarter sessions.

(*b*) Truck Act, 1831 (1 & 2 Will. 4, c. 37).

(*c*) *Ibid.*, s. 9. This Act provides (ss. 1, 2) that wages under contracts for the hiring of artificers must be paid in current coin and not in goods, and that such contracts must not contain any stipulations as to the place where or the manner in which the wages shall be expended. The Act does not extend to domestic or menial servants (s. 20). The term "artificer" includes any person who being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, has entered into or works under a contract with an employer (Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 10; Truck Amendment Act, 1887 (50 & 51 Vict. c. 46), s. 2). See, generally, the Truck Amendment Act, 1887 (50 & 51 Vict. c. 46), and the Truck Act, 1896 (59 & 60 Vict. c. 44), and title MASTER AND SERVANT.

(*d*) Truck Act, 1831 (1 & 2 Will. 4, c. 37), s. 9. The punishment for a first offence on summary conviction is a fine of £10; for a second offence, £20 (*ibid.*).

(*e*) Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), amended by the Merchandise Marks Act, 1891 (54 & 55 Vict. c. 15), and the Merchandise Marks (Prosecutions) Act, 1894 (57 & 58 Vict. c. 19). At common law to copy a trade mark or a wrapper for goods, which wrapper was fraudulently made to resemble that used by another person, was not forgery, although if a person in the course of his trade, openly and publicly carried on, put a false mark or token upon an article so as to pass it off for a genuine one, when in fact it was spurious, and the article was sold and money obtained by means of that false mark or token, this would amount to a common law cheat, as to which see p. 689, *post* (*R.* v. *Closs* (1858), Dears. & B. 460; *R.* v. *Smith* (1858), Dears. & B. 566).

(*f*) Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2.

(*g*) A person is deemed to forge a trade mark who without the assent of the proprietor makes that trade mark or a mark so nearly resembling it as to be calculated to deceive, or who falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise. The burden of proving the assent of the proprietor is on the defendant (Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 4).

(*h*) Trade mark means a trade mark registered in the register of trade marks kept under the Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 4, and any trade mark which either with or without registration is protected by law in any British possession or foreign State to which the provisions of s. 91 of the Patents and Designs Act, 1907 (7 Edw. 7, c. 29), are applicable (*ibid.*, s. 3; Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 4; Patents and Designs Act, 1907 (7 Edw. 7, c. 29), ss. 91, 98). See title TRADE MARKS AND DESIGNS.

(*i*) As to the persons who are deemed to apply a trade mark, see Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 5.

goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive; or (3) makes any die (*k*), block, machine, or other instrument for the purpose of forging or of being used for forging a trade mark; or (4) applies any false trade description (*l*) to goods; or (5) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark; or (6) causes any of the things above mentioned to be done, unless in any such case he proves that he acted without intent to defraud (*m*).

The punishment for this offence on conviction on indictment is imprisonment with or without hard labour for not more than two years, or a fine or both (*n*).

Sale of goods with forged marks.

1146. Every person is by statute (*o*) guilty of a misdemeanour who sells or exposes for or has in his possession for sale, or any purpose of trade or manufacture, any goods or things to which any

(*k*) See p. 568, *post*.

(*l*) "Trade description" means any description, statement, or other indication, direct or indirect, as to the number, quantity, measure, gauge or weight of any goods, or as to the place or country in which they were made or produced, or as to the mode of manufacture or production, or as to the material of which they are composed, or as to their being the subject of an existing patent, privilege, or copyright (as to which see also Patents and Designs Act, 1907 (7 Edw. 7, c. 29), s. 89 (2), which imposes a penalty of £5 in such cases); a "false trade description" is a trade description which is false in a material respect, and includes the alteration of a trade description where the alteration makes the description false in a material respect (Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 3). For special provisions as to watch cases, see *ibid.*, ss. 7, 8. A person who makes a false declaration for the purposes of the Act as to the country or place in which a watch case was made is liable, on conviction on indictment, to the penalties of perjury (*ibid.*, s. 8). A false statement on an invoice is a false description within the Act (*Coppen* v. *Moore* (No. 1), [1898] 2 Q. B. 300); and a writing unintelligible by itself may be a trade description, if it is orally explained by the vendor at the time of sale (*Cameron* v. *Wiggins*, [1901] 1 K. B. 1). There is a *dictum* of WRIGHT, J., in *Coppen* v. *Moore* (No. 1), *supra*, that an oral false description is not a trade description within the Act; but see s. 3 (1), and *Cameron* v. *Wiggins*, *supra*. See also as to what amounts to a false trade description, or to the application of such a description, *Kirshenboim* v. *Salmon and Gluckstein*, [1898] 2 Q. B. 19; *Langley* v. *Bombay Tea Co.*, [1900] 2 Q. B. 460; *Williamson* v. *Tierney* (1900), 65 J. P. 70; *Davenport* v. *Apollinaris Co.* (1903), 67 J. P. 323; *North Eastern Breweries, Ltd.* v. *Gibson* (1904), 68 J. P. 356; *Star Tea Co.* v. *Whitworth* (1904), 68 J. P. 443; *Fowler* v. *Cripps*, [1906] 1 K. B. 16; *Hooper* v. *Riddle & Co.* (1906), 70 J. P. 417). In the case of imported goods evidence of the port of shipment will be *primâ facie* evidence of the country in which the goods were made (s. 10 (2)); and the customs entry relating to imported goods is, for the purposes of the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), deemed to be a trade description applied to the goods (Merchandise Marks Act, 1891 (54 & 55 Vict. c. 15), s. 1.

(*m*) An intention to defraud is an intention to induce the buyer to take something different to that to which he was entitled under the contract, and which he did not know he was taking, whether it be worse than the article contracted for or not (*Starey* v. *Chilworth Gunpowder Co.* (1889), 24 Q. B. D. 90; *Kirshenboim* v. *Salmon and Gluckstein*, *supra*). To constitute the offence there must be an intention to mislead (*Gridley* v. *Swinborne* (1888), 52 J. P. 791).

(*n*) Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2 (3); and see *ibid.*, s. 2 (6). This offence is triable at quarter sessions. As to the punishment on summary conviction and the forfeiture of the goods, see note (*q*) on p. 568, *post*.

(*o*) *Ibid.*, s. 2 (2).

SECT. 6. Offences relating to Trade.

forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, unless he proves (1) that, having taken all reasonable precautions against committing an offence against the Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and (2) that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods; or (3) that otherwise he had acted innocently (*p*).

The punishment for this offence on conviction on indictment is imprisonment with or without hard labour for not more than two years, or a fine or both (*q*).

Defence.

1147. A defendant who is charged with making any die, block, machine, or other instrument for the purpose of forging or being used for forging a trade mark, or with falsely applying to goods any trade mark or any mark resembling a trade mark or any false trade description, and who proves (1) that in the ordinary course of his business he is employed to make dies etc. for making or being used in making trade marks or to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom and was not interested in the goods by way of profit or commission dependent on their sale; and (2) that he took reasonable precautions against committing the offence charged; and (3) that at the time of the commission of the alleged offence he had no reason to suspect the genuineness of the trade mark, mark, or trade description; and (4) that he gave the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or trade description was applied, is entitled to be discharged, but is liable to pay the costs incurred by

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(*p*) A person who has reason to suspect the genuineness of a trade mark on goods which he is selling may act innocently, and therefore be entitled to an acquittal of a charge under this section, if he states in good faith at the time of sale that there was a doubt whether the trade mark was genuine, and that he did not guarantee it, but sold the articles for what they were worth (*Christie, Manson and Woods* v. *Cooper*, [1900] 2 Q. B. 522). Under this sub-section an intention to defraud is not a necessary ingredient of the offence (*Wood* v. *Burgess* (1889), 24 Q. B. D. 162).

(*q*) Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2 (3). A person charged before a court of summary jurisdiction with an offence against this Act has a right to be tried on indictment, if he so desires, and he must be informed of such right before the charge is gone into (*ibid.*, s. 2 (6); Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 17). On summary conviction an offender may be sentenced to imprisonment with or without hard labour for four months, or to a fine of £20, and upon a second or subsequent conviction to imprisonment with or without hard labour for six months, or to a fine of £50, and, whether convicted on indictment or before a court of summary jurisdiction, the offender forfeits to the King every chattel, article, instrument or thing by means of or in relation to which the offence was committed (Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2 (3)). The Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), applies to indictments for offences against the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 13. Offences against the Merchandise Marks Act, 1887, are triable at quarter sessions.

the prosecutor, unless he has given due notice to him that he will rely on this defence (*r*).

Accessories.

1148. A person within the United Kingdom who procures, aids, or is accessory to the commission without the kingdom of any act which, if committed in the kingdom, would under the Merchandise Marks Act, 1887 (*s*), be a misdemeanour is guilty of that misdemeanour as a principal, and may be tried in any county or place in the kingdom in which he may be (*t*).

Limitation of time.

1149. No prosecution for an offence against the Merchandise Marks Act, 1887 (*a*), can be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens (*b*).

Liability of master and servant.

1150. The servant of a master resident in the United Kingdom who *bonâ fide* acts in obedience to the instructions of such master, and on demand made by the prosecutor has given full information as to his master, is not liable to prosecution under the Act (*c*). But a master is liable for any action on the part of his servant or agent which was done within the scope or in the course of his employment, and which may be an offence against the Act, unless the master can prove that he acted in good faith and had done all that it was reasonably possible to do to prevent the commission by his agents and servants of offences against the Act (*d*).

1151. The Board of Trade, and in cases relating to agricultural or horticultural produce the Board of Agriculture and Fisheries, may authorise prosecutions at the public expense for offences against the Act (*e*).

SECT. 7.—*Libels and Indictable Slanders.*

1152. The publication of a defamatory libel is a misdemeanour at common law. The publication of a defamatory libel with knowledge that it is false is a statutory misdemeanour (*f*). To publish

(*r*) Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 6; see also s. 2 (2), *ante*.

(*s*) 50 & 51 Vict. c. 28.

(*t*) *Ibid.*, s. 11. After proceedings for an offence against the Act have been commenced by the issue of a summons or warrant of arrest, if the justice who issued the summons etc., or any other justice, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which the offence has been committed are in any premises of the defendant or otherwise in his possession or under his control in any place, such justice may issue a warrant authorising a constable named or referred to in the warrant to enter such house etc. at any reasonable time by day and there search for and seize and take away such goods (*ibid.*, s. 12).

(*a*) 50 & 51 Vict. c. 28.

(*b*) *Ibid.*, s. 15.

(*c*) Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 19 (3).

(*d*) *Coppen* v. *Moore* (No. 2), [1898] 2 Q. B. 306, 314.

(*e*) Merchandise Marks Act, 1891 (54 & 55 Vict. c. 15), s. 2; Merchandise Marks (Prosecution) Act, 1894 (57 & 58 Vict. c. 19), s. 1; see Regulations of the Board of Trade of 21 May, 1892 (Statutory Rules and Orders Revised, Vol. VII., Merchandise Marks, pp. 13, 14); Regulations of the Board of Agriculture, 27 October, 1894 (*ibid.*).

(*f*) Libel Act, 1843 (6 & 7 Vict. c. 96), s. 4.

SECT. 7. Libels and Indictable Slanders.

or threaten to publish a libel upon any other person is a statutory misdemeanour (*g*). To slander a private person by mere spoken words is not indictable, unless they tend immediately to a breach of the peace, or are blasphemous or seditious (*h*). Prosecutions for libel and slander are dealt with in another part of this work (*i*).

Part XII.—Offences against the Person.

SECT. 1.—*Acts involving bodily Injury.*

SUB-SECT. 1.—*Homicide.*

Homicide.

1153. The killing of a human being by a human being is in law known as homicide. Homicide may be (1) culpable, *i.e.*, criminal; (2) justifiable; (3) excusable (*k*).

Culpable homicide is either murder or manslaughter, and is a felony at common law (*l*).

(i.) *Murder.*

Murder.

1154. It is murder for a person of sound memory and discretion (*m*) unlawfully to kill any human creature in being and under the King's peace, with malice aforethought, either express or implied by law, provided the person killed dies of the injury inflicted within a year and a day after the same (*n*).

Man-slaughter.

Manslaughter is the unlawful killing of such a person without malice either express or implied (*o*).

Presumption in cases of murder.

When it has been proved that one person's death has been caused by another, there is a *primâ facie* presumption of law that the act of the person causing the death is murder, unless the contrary appears from the evidence either for the prosecution or for the defence. The onus is upon such person when accused to show that his act did not amount to murder (*p*).

Person in being.

1155. The person killed must be one who is in being. It is neither murder nor manslaughter to kill an unborn child while still in its mother's womb (*q*); but if the child be born alive

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(*g*) Libel Act, 1843 (6 & 7 Vict. c. 96), s. 3.

(*h*) As to blasphemous and seditious libels, see pp. 460, 530, *ante;* as to oral words spoken in contempt of a judicial officer, see p. 501, *ante.*

(*i*) See title LIBEL AND SLANDER.

(*k*) Stephen, Digest of the Criminal Law, 6th ed., 175.

(*l*) As to suicide, see p. 592, *post.*

(*m*) As to criminal acts committed by lunatics and the extent to which persons of unsound mind are responsible for such acts, see p. 241, *ante.*

(*n*) 3 Co. Inst. 47, 50; Co. Litt. 287 b.

(*o*) *R.* v. *Taylor* (1834), 2 Lew. C. C. 215; *R.* v. *Hughes* (1857), Dears. & B. 248. Both in murder and in manslaughter the criminal act may be one of omission as well as of commission (*R.* v. *Hughes, supra*).

(*p*) Fost. 255, 290; *R.* v. *Greenacre* (1837), 8 C. & P. 35, 42, TINDAL, C.J. Where, however, the deceased is killed in attempting to make an arrest, the onus is upon the prosecution to show that the arrest was lawful, and if this is not shown, the killing is manslaughter only (*R.* v. *Withers* (1784), 1 East, P. C. 295).

(*q*) 3 Co. Inst. 50; 1 Hale, P. C. 433; 1 Hawk. P. C., c. 13, s. 16.

and afterwards die by reason of a felonious act done to it in the mother's womb or in the act of birth, the person who committed that act is guilty of murder (*a*).

A child is not considered in law to be completely born, so as to be the subject of either murder or manslaughter, until the whole body of the child is brought alive into the world having an independent circulation, and breathing, or capable of breathing, from its own lungs, so that it possesses, or is capable of, an existence independent of connection with its mother (*b*). But the child may be completely born although the umbilical cord be not severed (*c*).

Person in the King's peace.

1156. The person killed must be in the King's peace. The King's peace extends to all persons in England, whether British subjects, outlaws, or aliens, except rebels and alien enemies who are at the time actually engaged in hostile operations against the Crown (*d*).

If a person is feloniously stricken, poisoned or otherwise hurt upon the sea or at any place out of England or Ireland, and dies of such stroke etc. in England or Ireland, or being feloniously stricken etc. in any place in England or Ireland dies of such stroke etc. upon the sea or at any place out of England or Ireland, the offence, whether it amounts to murder or manslaughter or of being accessory thereto, may be inquired into, tried and punished, in the county or place in England or Ireland where the death, stroke, poisoning, or hurt happens as if the offence had been wholly committed in that place (*e*).

Death after a year and a day.

1157. If death does not ensue until after the expiration of a year and a day from the date when the injury was inflicted, it is an irrebuttable presumption of law that the death is attributable to some other cause, and the person who inflicted the injury is not punishable for either murder or manslaughter (*f*).

(*a*) 3 Co. Inst. 50; 1 Hawk. P. C., c. 13, s. 16; *R.* v. *West* (1848), 2 Car. & Kir. 784, MAULE, J., where in consequence of an act done by the prisoner with intent to procure abortion the child was born so prematurely that it died shortly after birth (see also *R.* v. *Senior* (1832), 1 Mood. C. C. 346); but according to Hale such a killing is not murder (1 Hale, P. C. 433). As to procuring abortion, see p. 596, *post*.

(*b*) *R.* v. *Poulton* (1832), 5 C. & P. 329, LITTLEDALE, J.; *R.* v. *Enoch* (1833), *ibid.*, 539, PARK, J. In *R.* v. *Brain* (1834), 6 C. & P. 349, PARK, J., it was held that a child born alive could be the subject of a murder, although it had not in fact breathed; *R.* v. *Crutchley* (1837), 7 C. & P. 814, PARKE, B.; *R.* v. *Sellis* (1837), 7 C. & P. 850, COLTMAN, J., where it was laid down that the fact that a child had breathed was not conclusive proof that it was born alive, as it might have breathed and died before birth; *R.* v. *Wright* (1841), 9 C. & P. 754, GURNEY, B.

(*c*) *R.* v. *Crutchley, supra*; *R.* v. *Trilloe* (1842), 2 Mood. C. C. 260, C. C. R.; *R.* v. *Reeves* (1839), 9 C. & P. 25, VAUGHAN, J.

(*d*) 3 Co. Inst. 47; 1 Hale, P. C. 433; 1 East, P. C. 227; 4 Bl. Com. 198.

(*e*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 10. This cannot apply to the case of a foreigner committing a murder abroad, even though the person murdered died here; no British statute can make the acts of a foreigner committed abroad punishable here. As to murder committed in England by a prisoner of war, see Fost. 188; *R.* v. *Sattler* (1858), 7 Cox, C. C. 431, C. C. R.; *R.* v. *Depardo* (1807), 1 Taunt. 26. As to murders and other offences committed at sea or abroad, see pp. 277, 284, *ante*.

(*f*) 3 Co. Inst. 53; 1 Hawk. P. C., c. 13, s. 9; 1 East, P. C. 343. The day of the infliction of the injury is reckoned as the first day (*ibid.*; see *R.* v. *Martin* (1832), 5 C. & P. 128; approved in *R.* v. *Dyson*, [1908] 2 K. B. 454, C. C. A.).

SECT. 1. **Acts involving bodily Injury.**

Accelerating death.

Death from fright.

1158. A person may be guilty of murder or manslaughter whether he directly causes or accelerates death (*g*).

If the death of an infant or of an aged or infirm person directly results from fright caused by an unlawful assault committed by the accused upon another person, the accused is guilty of manslaughter (*h*).

Where one person attacks or threatens to attack another and compels the person attacked by bodily force, or induces him by a well-grounded apprehension of immediate serious violence, to do some act which directly results in his death, the person attacking or threatening to attack is guilty of murder (*i*).

Intervening causes.

If a dangerous wound is inflicted and death results, the person who inflicted the wound is criminally responsible for the death, although the person wounded neglected to use proper remedies (*k*) or refused to submit to a necessary operation (*l*), or died after such an operation which was carefully and properly performed (*m*).

If a wound is given which is not in itself mortal or dangerous, but which from improper treatment becomes the cause of death, the person who gave the wound will not be criminally responsible for the death, if it clearly appears that the death was caused by the improper treatment (*n*).

A person who gives false evidence which leads to the conviction and execution of an innocent person is not, it seems, guilty of murder (*o*).

Malice aforethought.

1159. To constitute murder there must be malice aforethought, express or implied by law.

Express malice exists where the deliberate purpose of the accused is to deprive another of life or to do some great bodily harm (*p*).

It is unnecessary to show any intention to kill or injure the deceased person in particular or any special degree of ill will towards him; if there be an intention to kill or seriously injure anyone among a number of persons, as by firing a gun into a crowd, there is evidence of express malice (*q*).

(*g*) *R.* v. *Murton* (1862), 3 F. & F. 492, BYLES, J.

(*h*) *R.* v. *Towers* (1874), 12 Cox, C. C. 530, DENMAN, J., where an infant was said to have died from convulsions brought on or made worse by the act of the defendant in committing an assault on its mother; see, however, 1 Hale, P. C. 429.

(*i*) *R.* v. *Towers*, *supra*, at p. 533; *R.* v. *Evans* (1812), 3 Russell on Crimes, 12; *R.* v. *Hickman* (1831), 5 C. & P. 151, PARK, J.; *R.* v. *Pitts* (1842), Car. & M. 284, ERSKINE, J.; and see *R.* v. *Halliday* (1889), 61 L. T. 701, C. C. R. See *R.* v. *Curley* (1909), 2 Cr. App. Rep. 109.

(*k*) 1 Hale, P. C. 428; 1 East, P. C. 344; *R.* v. *Rew* (1662), Kel. 26; *R.* v. *Flynn* (1867), 16 W. R. 319, C. C. R. (Ir.).

(*l*) *R.* v. *Holland* (1841), 2 Mood. & R. 351, MAULE, J.

(*m*) *R.* v. *Pym* (1846), 1 Cox, C. C. 339, ERLE and ROLFE, JJ.; *R.* v. *McIntyre* (1847), 2 Cox, C. C. 379, COLERIDGE, J.; *R.* v. *Davis* (1883), 15 Cox, C. C. 174, MATHEW, J.

(*n*) 1 Hale, P. C. 428; *R.* v. *Flynn*, *supra*.

(*o*) *R.* v. *Macdaniel* (1756), 1 Leach, 44; see, as to this case, Fost. 131; 1 East, P. C. 333.

(*p*) 1 East, P. C. 222, 223; see also 3 Co. Inst. 51; 1 Hale, P. C. 451.

(*q*) 1 Hawk. P. C., c. 11, s. 12. In such a case the malice is called general.

1160. Anyone who kills another person upon the desire or command of the latter is guilty of murder (*r*). Anyone who kills an innocent and unoffending person in order to save his own life is guilty of murder (*s*).

Killing by request, or to save life.

1161. If anyone shoots at or stabs or lays poison for or does any other act with the malicious intent to kill one person, and by mistake kills another person by means of such act, the person who does the act is guilty of the murder of the person killed (*a*).

Killing by mistake.

1162. If anyone incites another person to commit suicide, and such person does commit suicide, the one who incites is guilty of murder; if two persons agree and attempt to commit suicide together, and one commits suicide and the other does not, the survivor is guilty of murder (*b*).

Inciting to suicide.

1163. Malice aforethought is implied by law (1) where the person killed is an officer of the law legally arresting or imprisoning the accused or executing other process of law in a legal manner; (2) where, although there may have been provocation, such provocation has not been sufficient to reduce the offence to manslaughter; (3) where the killing has been caused by the accused while he was committing some other felony.

Malice implied.

1164. The act which causes death is murder, where the death is the result of intentional forcible opposition to an officer of justice in all cases where that officer has either by common law or by statute a right or is under a duty to arrest or keep in custody any other person or to prevent the commission of a felony or breach of the peace and is actually engaged in the performance of that duty (*c*), provided the accused knows that such person is an officer acting in pursuance of his duty.

Opposition to officers.

The same principle extends to private persons assisting officers, whether specially called upon to do so or not (*d*), to private persons interposing in case of an affray or endeavouring to apprehend felons (*e*), or arresting in cases where either by common law or by statute they have power to arrest, to bailiffs and other officers executing civil process (*f*), to gamekeepers when

Private persons assisting officers.

(*r*) 1 Hawk. P. C., c. 9, s. 6; *R.* v. *Sawyer* (1815), 3 Russell on Crimes, 5, n.

(*s*) 1 Hale, P. C. 451, 455; *R* v. *Dudley* (1884), 14 Q. B. D. 273.

(*a*) Bract. De Cor. c. 36, Rolls ed. II., 545; Fost. 261; *R.* v. *Saunders* (1576), Plowd. 473; *R.* v. *Hunt* (1825), 1 Mood. C. C. 93; *R.* v. *Bernard* (1858), 1 F. & F. 241, CAMPBELL, C.J. In such cases the rule is *malitia egreditur personam.*

(*b*) *R.* v. *Dyson* (1823), Russ. & Ry. 523; *R.* v. *Alison* (1838), 8 C. & P. 418, PATTESON, J.; *R.* v. *Jessop* (1887), 16 Cox, C. C. 204, FIELD, J.; *R.* v. *Stormouth* (1897), 61 J. P. 729, RIDLEY, J.; *R.* v. *Abbott* (1903), 67 J. P. 151, KENNEDY, J.

(*c*) 1 Hale, P. C. 457; Fost. 270, 308, 309; *R.* v. *Howarth* (1828), 1 Mood. C. C. 207; *R.* v. *Woolmer* (1832), 1 Mood. C. C. 334; *R.* v. *Williams* (1833), 1 Mood. C. C. 387 (*R.* v. *Porter* (1873), 12 Cox, C. C. 444, BRETT, J.

(*d*) Fost. 309; *R.* v. *Porter*, *supra.*

(*e*) Fost. 309.

(*f*) Fost. 310, 311; 1 Hawk. P. C., c. 13, s. 61. As to arrest see p. 296, *ante.*

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entitled to arrest poachers (*g*), and to members of a press gang (*h*).

The authority must be lawful.

The officer or other person killed must have been acting at the time under a lawful authority. If he was at the time acting under a writ or warrant which is invalid on the face of it, or if the deceased officer was arresting or attempting to arrest the accused without a warrant for a cause for which he was not entitled so to arrest him, the killing is manslaughter only, and not murder (*i*), but the fact that the process is merely informal (*k*), or that a civil judgment upon which the warrant to arrest is based is erroneous (*l*), does not prevent the killing from being murder.

The same principles apply where a constable or other person present is killed when lawfully interfering to prevent the commission of a crime or a breach of the peace (*m*). The officer must at the time when he was killed have been acting within the limit of his local authority, or the offence will be only manslaughter (*n*).

The killing of an officer in the execution of his duty is not murder unless he is both lawfully authorised and exercising his authority in a legal manner. If an officer is killed while attempting to arrest a prisoner for a misdemeanour for which he is not entitled to arrest without a warrant, and the officer has not the

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(*g*) *R.* v. *Ball* (1832), 1 Mood. C. C. 330; *R.* v. *Whithorne* (1828), 3 C. & P 394; see also *R.* v. *Warner* (1833), 1 Mood. C. C. 380. If the gamekeeper is the servant of a person who has only the right of shooting, and is not the owner or occupier of the land, he has no right to arrest, and may be resisted if he attempts to arrest (*R.* v. *Wood* (1859), 1 F. & F. 470, MARTIN, B.).

(*h*) *R.* v. *Broadfoot* (1743), Fost. 154.

(*i*) Fost. 311, 312; *R.* v. *Stockley* (1753), 1 East, P. C. 310 (warrant issued in blank which had afterwards been filled in by the officer); *R.* v. *Hood* (1830), 1 Mood. C. C. 281 (warrant leaving a blank for the christian name of person to be arrested and giving no reason for omitting it, but describing the person insufficiently; but see *R.* v. *Winwick* (*Inhabitants*) (1800), 8 Term Rep. 454, Lord KENYON, C.J.); *R.* v. *Thompson* (1825), 1 Mood. C. C. 80; *R.* v. *Curvan* (1826), 1 Mood. C. C. 132 (arrest without warrant); *R.* v. *Walker* (1854), Dears. C. C. 358 (arrest for a previous assault without a continued pursuit); *R.* v. *Lockley* (1864), 4 F. & F. 155, SHEE, J. (attempted arrest and handcuffing for bad language); *R.* v. *Prebble* (1858), 1 F. & F. 325, BRAMWELL, B; compare *R.* v. *Serva* (1845), 1 Den. 104). But if after an arrest the person arrested kills the officer, not with a view to obtain his own liberation, but from motives of revenge, the offence is murder, although the arrest may have been illegal (*R.* v. *Sattler* (1858), Dears. & B. 539).

(*k*) *R.* v. *Allen* (1867), 17 L. T. 222, BLACKBURN and MELLOR, JJ. In this case there was a deliberate intention to rescue and to kill the officer having a prisoner in custody, and the accused had no knowledge of the alleged informality.

(*l*) 1 Hale, P. C. 457; Fost. 311; *R.* v. *Mackalley* (1611), 9 Co. Rep. 65 a, 68 a.

(*m*) 1 Hawk. P. C., c. 13, ss. 48, 54; Fost. 310; *R.* v. *Lockley*, *supra*; *R.* v. *Curran* (1828), 3 C. & P. 397).

(*n*) *R.* v. *Tooley* (1709), 2 Ld. Raym. 1296, 1302; *R.* v. *Weir* (1823), 1 B. & C. 288, 293; see also *R.* v. *Sanders* (1867), L. R. 1 C. C. R. 75; *R.* v. *Cumpton* (1880), 5 Q. B. D. 341, C. C. R. If the constable named in the warrant hands it over to some other person to execute, the officer named not being present or close at hand, and the person attempting to make the arrest is killed, the offence is only manslaughter (*R.* v. *Whalley* (1835), 7 C. & P. 245, WILLIAMS, J.; *R.* v. *Patience* (1837), 7 C. & P. 775, PARKE, B.).

warrant in his possession at the time (*o*), the offence is manslaughter, not murder (*p*).

If an officer is killed when breaking open the outer door of a house for the purpose of making an arrest, and he has not first demanded admittance and been refused, the killing is manslaughter only (*q*).

If there is no evidence of express malice, the killing of an officer is only manslaughter, if the prisoner did not know that the deceased was an officer (*r*). If he had that knowledge either from seeing the warrant or from his previous acquaintance with the deceased, or if, in the absence of such knowledge, there is evidence of express malice, the offence is murder (*s*).

If a private person lawfully arresting or interfering gives notice of the intention with which he is acting and is killed, the offence is murder; if he does not give such notice, the offence is manslaughter (*t*).

Execution of criminal.

1165. If a criminal is sentenced to death by a court having authority to pass such a sentence, his execution in the proper manner and by the proper officer is justifiable; but if the execution is by an officer upon whom that duty is not cast, or if it is carried out in a different manner from that which is authorised by the form of the sentence, it is murder (*a*).

Killing by an officer who is resisted.

1166. Where an officer is forcibly resisted while in the legal execution of his duty, whether such duty relates to civil or to criminal process, he is entitled to repel force by force, and if in the course of so doing the person resisting him is killed, the killing is justifiable; provided there was a reasonable necessity for the use of such force by the officer, and that the amount of force used was not unreasonable or excessive; otherwise the killing is manslaughter at least. An officer who kills a person who makes no resistance is guilty

(*o*) See p. 309, *ante*.

(*p*) *R.* v. *Chapman* (1871), 12 Cox, C. C. 4, HANNEN, J.; *R.* v. *Carey* (1879), 14 Cox, C. C. 214, LINDLEY, J. But in this and all other cases of irregular arrest it would appear that if the accused acted with premeditation and from a previously existing intention to murder the officer, whether he were duly authorised or not, the offence is murder (see *R.* v. *Allen*, *supra*; *R.* v. *Carey*, *supra*).

(*q*) Fost. 136, 320. See p. 309, *ante*.

(*r*) *R.* v. *Curtis* (1756), Fost. 135, 137; *R.* v. *Stockley* (1772), 1 East, P. C. 310; *R.* v. *Gordon* (1789), *ibid.* 315, 352.

(*s*) 1 Hale, P. C. 438, 458, 461, 470; 1 Hawk. P. C., c. 13, ss. 49, 50; Fost. 310; *R.* v. *Woolmer* (1832), 1 Mood. C. C. 334. On the trial of an indictment in such a case it is not necessary to prove the officer's appointment; it is sufficient that he was known to act as such (*R.* v. *Gordon* (1789), 1 Leach, 515).

(*t*) Fost. 311. But express notice is not required where the circumstances of the case were such that the prisoner must have known why the private person was seeking to apprehend him, as where he was caught in the act of committing a felony (*R.* v. *Howarth* (1828), 1 Mood. C. C. 207).

(*a*) 3 Co. Inst. 52; 1 Hale, P. C. 501. But, as Hale points out, it was in former times common to modify the form of execution for high treason from that directed by the express terms of the sentence (see Fost. 267). As to the mode of execution and the officers whose duty it is to carry out a sentence of death, see Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 1, 2; Capital Punishment Amendment Act, 1868 (31 & 32 Vict. c. 24), ss. 2, 3; Central Criminal Court (Prisons) Act, 1881 (44 & 45 Vict. c. 64), s. 2 (5); Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 13.

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of murder (*b*). The same rule applies to killing by persons assisting officers or lawfully arresting or interfering to prevent a breach of the peace (*c*).

An officer is not bound to retreat before the person resisting (*d*).

Officers attempting to put an end to a riot, and other persons assisting them, are justified in killing persons taking part in it who refuse to disperse or who resist apprehension (*e*).

If a person whom an officer or a private person is legally attempting to arrest upon a charge of treason, or felony, or inflicting a dangerous wound, flees, and he cannot be otherwise arrested, he may be killed, and the homicide is justifiable (*f*).

If the charge upon which the arrest is sought to be made is only a misdemeanour or a breach of the peace, or if the attempted arrest is on civil process, the killing by the officer is murder, if it is intentional or is done with a weapon likely to kill, but only manslaughter if the death is unintentionally caused by means not likely to cause death (*g*).

Every prison officer while acting as such has, by virtue of his appointment, all the powers, authorities, protection, and privileges of a constable (*h*).

Provocation.

1167. When the accused person has received provocation from the deceased, malice aforethought is nevertheless implied and the killing is murder, unless the provocation be of such a character as to reduce the offence to manslaughter. If there is evidence of

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(*b*) 1 Hale, P. C. 490, 494, 496; 1 East, P. C. 297; Fost. 318, 321; *R.* v. *Goffe* (1672), 1 Vent. 216; *R.* v. *Dixon* (1756), 1 East, P. C. 313, where a person not liable to impressment resisted the press gang and was killed, and this was held to be murder; *R.* v. *Longden* (1812), Russ. & Ry. 228.

(*c*) 1 Hale, P. C. 484; Fost. 274.

(*d*) 1 Hale, P. C. 481; Fost. 321.

(*e*) 1 Hale, P. C. 495; 1 Hawk. P. C., c. 10, s. 14; Riot Act (1 Geo. 1, stat. 2, c. 5), s. 3. As to homicide during an unlawful assembly, see *R.* v. *McNaughten* (1881), 14 Cox, C. C. 576 (Ir.).

(*f*) 1 Hale, P. C. 489; 1 Hawk. P. C., c. 10, ss. 11, 12; Fost. 271. As to the killing of a person trying to escape from a press gang who had pressed him without due warrant, see *R.* v. *Rokeby* (1690), 1 East, P. C. 312; and *R.* v. *Dixon*, *supra*.

(*g*) 1 Hale, P. C. 489; 2 Hale, P. C. 77, 117; Fost. 271; 1 East, P. C. 302, 306.

(*h*) Prison Act, 1898 (61 & 62 Vict. c. 41), s. 10. The provisions of this Act are extended to State inebriate reformatories by the Inebriates Act, 1898 (61 & 62 Vict. c. 60), s. 4. If a prisoner confined for treason, felony or inflicting a dangerous wound were killed by a gaoler whilst effecting his escape and where there was no other way of preventing such escape, no question could arise as to the justification of the gaoler, since he would have the same protection as a constable. With regard to a prisoner convicted of a misdemeanour and under sentence of penal servitude, he, by escaping during his sentence, commits the felony of being at large during a sentence of penal servitude (see p. 512, *ante*), and the officer in seeking to recapture him has the same protection as in the case of an ordinary felon. But a convict detained for misdemeanour and not under a sentence of penal servitude, or a person who is imprisoned for debt and who escapes, may not be killed (*R.* v. *Forster* (1825), 1 Lew. C. C. 187, HOLROYD, J.), unless he resists the gaoler and gives him reasonable ground for believing himself to be in peril of his life or of bodily harm, in which case the latter is entitled to use a deadly weapon, if no other is at hand (*ibid.*; 1 Hale, P. C. 496; 1 East, P. C. 295).

express malice, no provocation is sufficient to reduce the crime to manslaughter (*i*).

Mere words or gestures, however insulting or indecent, will not in themselves so reduce the offence, where the killing is intentional or is caused by a weapon likely to cause death (*k*). But it may be otherwise where such words are of a threatening nature and are accompanied by blows, although the latter may not of themselves be of sufficiently serious a nature as to reduce the offence from murder to manslaughter (*l*).

Provocation, however great, is insufficient for this purpose, if it is not recent and if there has been a sufficient time between the provocation and the killing for passion to subside and for reason to interpose (*m*). Provocation is also insufficient for the purpose of reducing the offence from murder to manslaughter, if the manner of killing be barbarous and such as to show a cruel and deliberate intent to do mischief (*n*).

Correction.

1168. If anyone entitled to inflict lawful correction (*o*) while inflicting such correction unintentionally kills the person who is being corrected, the law does not imply malice. The death is regarded as having occurred by misadventure, if, having regard to the circumstances, the correction was inflicted moderately and with a proper instrument not likely to cause death or serious injury.

If the correction is inflicted with a deadly weapon and death is caused, the person inflicting correction is guilty of murder; if the

(*i*) *R.* v. *Mason* (1756), Fost. 132, 135, 291; *R.* v. *Kirkham* (1837), 8 C. & P. 115; *R.* v. *Welsh* (1869), 11 Cox, C. C. 336; *R.* v. *Whiteley* (1829), 1 Lew. C. C. 173, 175. See also p. 580, *post*.

(*k*) Fost. 290; 1 Hale, P. C. 455, 456, 457; 1 Hawk. P. C., c. 13, s. 33; 1 East, P. C. 233; *R.* v. *Morly* (*Lord*) (1666), Kel. 55; *R.* v. *Sherwood* (1844), 1 Car. & Kir. 556, POLLOCK, C.B. See, however, *R.* v. *Rothwell* (1871), 12 Cox, C. C. 145, in which BLACKBURN, J., appears to have been prepared to admit at least one exception to the rule, as he expressed the opinion that "if a husband suddenly hearing from his wife that she had committed adultery and he, having had no idea of such a thing before, were thereupon to kill his wife, it *might* be manslaughter. . . . Where, however, there are no blows, there must be a provocation equal to blows; it must be at least as great as blows." This case was followed in *R.* v. *Jones* (1908), 72 J. P. 215.

(*l*) Fost. 290, 291; 1 East, P. C. 233, where it is suggested that it might be sufficient, if the words were accompanied by some act denoting an immediate intention of following them up by an actual assault; *R.* v. *Sherwood*, *supra*; *R.* v. *Smith* (1866), 4 F. & F. 1066, where BYLES, J., expressed an opinion that if two military men met each other in the street, and one of them called the other a coward and a scoundrel and assaulted him by spitting in his face, whereupon the other killed him, this would be only manslaughter, but that if an ordinary quarrel arose between husband and wife, and the wife spat at the husband and he thereupon killed her, this would be murder.

(*m*) Fost. 296; 1 Hawk. P. C., c. 13, s. 40; Kel. 56; 1 East, P. C. 232; *R.* v. *Lynch* (1832), 5 C. & P. 324, Lord TENTERDEN, C.J.; *R.* v. *Hayward* (1833), 6 C. & P. 157, TINDAL, C.J.; *R.* v. *Fisher* (1837), 8 C. & P. 182, where PARK, J., said that whether there had been time for the blood to cool was rather a question of law.

(*n*) 1 Hale, P. C. 454; Fost. 291; 1 Hawk. P. C., c. 13, s. 42; 1 East, P. C. 235; *R.* v. *Thorpe* (1829), 1 Lew. C. C. 171, BAYLEY, J.; *R.* v. *Shaw* (1834), 6 C. & P. 372; *R.* v. *Thomas* (1837), 7 C. & P. 817, 819, PARKE, B.; compare *R.* v. *Ayes* (1810), Russ. & Ry. 166.

(*o*) As to the cases in which correction by personal chastisement is lawful, see p. 608, *post*.

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correction is inflicted with an instrument improper for the purpose but not likely to kill, or if the correction exceeds the bounds of moderation, the offence is manslaughter (*p*).

Duels.

1169. If two persons deliberately fight a duel and either party is killed, the law implies malice aforethought, and the survivor is guilty of murder, no matter what provocation he may have received or upon whose challenge the duel was fought (*a*).

Both the seconds who are present aiding and abetting are guilty of murder as principals in the second degree, as are also any other persons who are present and who encourage the combatants by advice or assistance (*b*).

If a duel is fought upon a sudden quarrel, and one of the parties is killed, the offence is manslaughter, and not murder (*c*).

Fight on sudden quarrel.

1170. Although if death results from a fight upon a sudden quarrel (*d*), the person who causes the death is generally guilty of manslaughter only, yet if in such a fight the parties separate, or are separated, and one afterwards lies in wait for the other and renews the fight, in the course of which the latter is killed, the person killing him is guilty of murder (*e*).

If to all appearance the parties are reconciled and afterwards fight again on a fresh sudden quarrel and one of them is killed, this is only manslaughter, unless the circumstances show that the reconciliation was merely pretended and that the injury done was on account of the former grudge (*f*).

In the case of a sudden quarrel, if the facts show that there was malicious intention on the part of the person who caused the death (*g*),

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(*p*) 1 Hale, P. C. 473, 474; Fost. 262; 1 Hawk. P. C., c. 11, s. 5; *R.* v. *Turner* (undated), cited in *R.* v. *Keate* (1698), Comb. 407, 408; *R.* v. *Gray* (1666), Comb. 408; *R.* v. *Wiggs* (1785), 1 Leach, 378, n. (chastisement of a servant); *R.* v. *Wall* (1802), 28 State Tr. 51, 145, where the prisoner, a colonial governor, was convicted of murder for ordering an excessive flogging which caused death; *R.* v. *Conner* (1836), 7 C. & P. 438; *R.* v. *Cheeseman* (1836), 7 C. & P. 455; *R.* v. *Bird* (1850), 5 Cox, C. C. 1; *R.* v. *Hopley* (1860), 2 F. & F. 202, COCKBURN, C.J. The chastisement of a child of very tender years must be of the very lightest description (*R.* v. *Griffin* (1869), 11 Cox, C. C. 402, MARTIN, B., where a father who had caused the death of his child aged two and a half years by beating it with a strap was convicted of manslaughter).

(*a*) 1 Hale, P. C. 443, 452; 1 Hawk. P. C., c. 31, ss. 21, 22; Fost. 297; *R.* v. *Mawgridge* (1706), 17 State Tr. 57; *R.* v. *Oneby* (1726), 17 State Tr. 29; *R.* v. *Rice* (1803), 3 East, 581, GROSE, J.

(*b*) 1 Hale, P. C. 442, 452; *R.* v. *Cuddy* (1843), 1 Car. & Kir. 210, WILLIAMS, J., and ROLFE, B.; *R.* v. *Young* (1838), 8 C. & P. 644, VAUGHAN, J. Mere presence as a spectator without giving encouragement or assistance will not justify a conviction (*R.* v. *Young*, *supra*; and see *R.* v. *Coney* (1882), 8 Q. B. D. 534, C. C. R., and p. 582, *post*).

(*c*) Fost. 297; 1 Hawk. P. C., c. 13, s. 29. See p. 581, *post*.

(*d*) See p. 581, *post*.

(*e*) 1 Hale, P. C. 451, 452; *R.* v. *Selten* (1871), 11 Cox, C. C. 674, HANNEN, J.

(*f*) *Ibid.*; 1 Hawk. P. C., c. 13, s. 30.

(*g*) As where he has started the fight under circumstances of unfair advantage (Fost. 295; *R.* v. *Mawgridge*, *supra*; *R.* v. *Whiteley* (1829), 1 Lew. C. C. 173, 176, BAYLEY, J.; *R.* v. *Kessal* (1824), 1 C. & P. 437, PARK, J.; *R.* v. *Smith* (1837), 8 C. & P. 160, 162, BOSANQUET and COLTMAN, JJ., and BOLLAND, B.); or where he has gone on to kill the deceased after completely overpowering him (*R.* v. *Shaw* (1834), 6 C. & P. 372, PATTESON, J.).

the person killing is guilty not of manslaughter, but of murder.

Death caused while felony is committed.

1171. Where a person whilst committing or attempting to commit a felony does an act which is known to be dangerous to life and likely in itself to cause death, and the death of another person results as a consequence of that act though not intended by the person committing it, the law implies malice aforethought, and the person causing the death is guilty of murder (*h*).

Murder of woman by drugs taken to procure abortion.

1172. A person is guilty of murder who administers to or incites a woman to take drugs for the purpose of procuring abortion, whether she be in fact pregnant or not (*i*), or who uses instruments for that purpose (*j*), if the woman dies in consequence of the drugs or operation.

Death by unlawful act.

1173. If death is caused during the commission of an act which is unlawful but not felonious, malice aforethought is not implied and the offence is manslaughter only (*k*).

Common design.

1174. Where several persons are engaged in a common design and another person is killed, whether intentionally or unintentionally, by an act of one of them done in prosecution of the common design, the others present are guilty of murder, if the common design was to commit murder, or to inflict felonious violence, or to commit any breach of the peace and violently to resist all opposers. If the common design was merely to commit an unlawful act involving violence, the others are guilty of manslaughter only (*l*).

(*h*) *R.* v. *Horsey* (1862), 3 F. & F. 287, BRAMWELL, B. ; *R.* v. *Vamplew* (1862), 3 F. & F. 520, 522, POLLOCK, C.B. ; *R.* v. *Serné* (1887), 16 Cox, C. C. 311, 313, STEPHEN, J., where the death was caused by the prisoner setting fire to a house with intent to defraud; *R.* v. *Whitmarsh* (1898), 62 J. P. 711, a case of death from an attempt to procure abortion, where BIGHAM, J., directed the jury that the killing would be murder, unless the chance of death was so remote that no reasonable man would take it into consideration. There are old *dicta* to the effect that if death is caused during the commission of any felony it is murder (see 3 Co. Inst. 56; Fost. 258 ; 1 East, P. C. 255 ; *R.* v. *Keate* (1698), Comb. 406, where, however, HOLT, C.J., at p. 409, expressed the opinion that the statement of the law by Coke in 3 Co. Inst. 56 was too wide; *R.* v. *Woodburne* (1722), 16 State Tr. 54, 80). But it is submitted that the modern rule is as stated in the text, which is taken from the summing up of STEPHEN, J., in *R.* v. *Serné*, *supra*, and it is believed that juries are now usually directed by judges in that way.

(*i*) *R.* v. *Russell* (1832), 1 Mood. C. C. 356 ; *R.* v. *Gaylor* (1857), Dears. & B. 288. Compare *R.* v. *Fretwell* (1862), Le. & Ca. 161, where the prisoner procured the drug for the deceased knowing the purpose for which she intended to use it, but the jury found that he did not incite her to take it, and it was held that he could not be found guilty of murder. Such a person might be found guilty of a misdemeanour under s. 59 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100). See p. 597, *post*.

(*j*) *R.* v. *Whitmarsh*, *supra*.

(*k*) 1 Hawk. P. C., c. 27, s. 6; *R.* v. *Sawyer* (1815), 3 Russell on Crimes, 5, n.

(*l*) Fost. 353 ; 1 Hawk. P. C., c. 13, ss. 51—54 ; *R.* v. *Hawkins* (1828), 3 C. & P. 392, PARK, J. ; *R.* v. *Hodgson* (1730), 1 Leach, 6 ; *R.* v. *Turner* (1864), 4 F. & F. 339, 341, CHANNELL, B. ; *R.* v. *White* (1806), Russ. & Ry. 99 ; *R.* v. *Tyler* (1838), 8 C. & P. 616; *R.* v. *Macklin* (1838), 2 Lew. C. C. 225, ALDERSON, B. ; *R.* v. *Price* (1858), 8 Cox, C. C. 96, BYLES, J. ; *R.* v. *Luck* (1862), 3 F. & F. 483, BYLES, J. ; *R.* v. *Skeet* (1866), 4 F. & F. 931, POLLOCK, C.B. ; *R.* v. *Doddridge*

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(ii.) *Manslaughter.*

Man-slaughter.

1175. Anyone is guilty of manslaughter (*m*) who (1) unlawfully kills another upon provocation of such a character (*n*) as to reduce the offence from murder to manslaughter, or upon a sudden quarrel; or (2) who, while committing an unlawful act or a felony not likely to cause danger to others, unintentionally kills another person; or (3) who unintentionally causes the death of another by the culpable neglect of a legal duty resting upon the person causing the death (*o*).

Provocation.

1176. If a person finds a man in the act of committing adultery with his wife and immediately kills either the adulterer or the adulteress, the act of killing is manslaughter, and not murder (*p*).

If any person unlawfully inflicts violent blows upon another or assaults him under circumstances of personal indignity (*q*), or unlawfully arrests or imprisons him (*a*), and the person so provoked immediately and unjustifiably kills the other, the offence is manslaughter, and not murder.

The nature of the weapon which caused the death must be taken into consideration. If a deadly weapon be used, the provocation required to reduce the crime from murder to manslaughter must be of a much more serious nature than if no weapon, or one not likely to cause death, were employed (*b*).

(1860), 8 Cox, C. C. 335; *R.* v. *Bernard* (1858), 1 F. & F. 240; *R.* v. *Rubens* (1909), 2 Cr. App. Rep. 163, and see p. 252, *ante*.

(*m*) For a general definition of manslaughter, see p. 570, *ante*, and for various cases of manslaughter, see pp. 572—9, *ante*.

(*n*) As to the degree of provocation which suffices for the purpose, see p. 576, *ante*; and see the next paragraph, *infra*.

(*o*) Cases of the first class have been distinguished as voluntary and of the second and third as involuntary manslaughter, but this distinction is of no practical importance. As to death unintentionally caused during the commission of a dangerous felony, see p. 579, *ante*. With regard to homicide caused during the commission of an act which is unlawful, it is perhaps uncertain whether, if the act is simply *malum quia prohibitum*, the illegality would be such as to render the doer guilty of manslaughter, as, *e.g.*, death accidentally caused while shooting at game by a person holding no licence authorising him to kill game. The older view was that the killing in such a case would not be manslaughter (see 1 Hale, P. C. 475; Fost. 259, 290).

(*p*) 1 Hale, P. C. 486; Fost. 296; *R.* v. *Manning* (1671), T. Raym. 212; *R.* v. *Pearson* (1835), 2 Lew. C. C. 216, PARKE, B.; *R.* v. *Kelly* (1848), 2 Car. & Kir. 814, ROLFE, B. If a rape is being committed on the wife, the killing of her assailant by the husband is justifiable (1 Hale, P. C. 486). In *R.* v. *Fisher* (1837), 8 C. & P. 182, PARK, J., expressed an opinion that the case of a father actually seeing his son and another person committing an unnatural offence would come within the same rule as the case of adulterers, and that killing by the father of such a person would only be manslaughter. As to provocation by an assault committed on a member of the family of a person who kills another, see *R.* v. *Harrington* (1866), 10 Cox, C. C. 370, COCKBURN, C.J.

(*q*) As by pulling his nose, Kel. 135; 1 East, P. C. 233; *R.* v. *Mawgridge* (1706), 17 State Tr. 57, 69. See p. 577, *ante*.

(*a*) *R.* v. *Withers* (1784), 1 East, P. C. 233; *R.* v. *Thompson* (1825), 1 Mood. C. C. 80; *R.* v. *Curvan* (1826), 1 Mood. C. C. 132; and see cases cited on p. 574, note (*i*), *supra*.

(*b*) Kel. 130, 131; Fost. 290, 291; 1 East, P. C. 233; 1 Hawk. P. C., c. 13, ss. 33, 34; *R.* v. *Stedman* (1704), Fost. 292; *R.* v. *Hagan* (1837), 8 C. & P. 167, COLTMAN, J.; see also *R.* v. *Tranter* (1722), 16 State Tr. 1, 52; *R.* v. *Willoughby* (1791), 1 East, P. C. 288. As to when homicide is justifiable, see p. 586, *post*.

Drunkenness.

1177. Although voluntary drunkenness is no excuse for crime, yet in cases where a certain degree of provocation has existed, the drunkenness of the accused may be taken by the jury into consideration upon the question whether the prisoner was excited by passion, or feared an attack upon himself, or whether he acted from malice (*c*). If the drunkenness was so great as to have prevented the accused from forming any intention, the offence is manslaughter, and not murder (*d*).

If the state of intoxication during which the homicide was committed was not voluntary, but was caused by the malice or negligence of another person, and the accused was in such a state as not to know what he was doing, the person who committed the homicide is not guilty of a crime (*e*).

Sudden quarrel.

1178. If a sudden quarrel arises, the parties to which fight upon fair terms either immediately or at a place to which they immediately resort for that purpose, and one of them is killed, the person killing the other, providing he took no unfair advantage, is guilty of manslaughter, and not of murder, whichever of them may have struck the first blow (*f*).

Struggles in anger.

1179. All struggles in anger, either by fighting or wrestling or in any other mode, are unlawful, and if in such a struggle the death of one person is caused by the intentional act of another, although the intention is not to cause death, the person causing the death is guilty of manslaughter (*g*).

(*c*) *R.* v. *Grindley* (1819), 1 Russell on Crimes, 6th ed., 144, n., HOLROYD, J.; *R.* v. *Pearson* (1835), 2 Lew. C. C. 144, PARK, J.; *R.* v. *Thomas* (1837), 7 C. & P. 817, PARKE, B.; *R.* v. *Gamlen* (1858), 1 F. & F. 90, CROWDER, J.; see also *R.* v. *Marshall* (1830), 1 Lew. C. C. 76, PARK, J.; *R.* v. *Monkhouse* (1849), 4 Cox, C. C. 55, COLERIDGE, J.; *R.* v. *Moore* (1852), 3 Car. & Kir. 319; *R.* v. *Doody* (1854), 6 Cox, C. C. 463, the last two being cases of suicide. But see, *contra*, *R.* v. *Carroll* (1835), 7 C. & P. 145, in which PARK, J., expressly disapproved of the *dictum* of HOLROYD, J., in *R.* v. *Grindley*, *supra*, that where, as upon a charge of murder, the material question is whether an act was premeditated or done only with sudden heat and impulse, the fact of the party being intoxicated is a proper circumstance to be taken into consideration; see also *R.* v. *Meakin* (1836), 7 C. & P. 297.

(*d*) *R.* v. *Doherty* (1887), 16 Cox, C. C. 306, 308; see also *R.* v. *Moore*, *supra*; *R.* v. *Doody*, *supra*; *R.* v. *Meade*, [1909] 1 K. B. 895, at p. 899, C. C. A. See also *R.* v. *Burke* (1908), *Times*, 11th December, 1908.

(*e*) 1 Hale, P. C. 32; Stephen, Digest of the Criminal Law, 6th ed., 23. A person who, while in *delirium tremens*, or in a state of frenzy originally caused by excessive drinking, kills another is regarded by the law as if he were insane (1 Hale, P. C. 32; *R.* v. *Davis* (1881), 14 Cox, C. C. 563, STEPHEN, J.).

(*f*) 1 Hale, P. C. 453, 456; Fost. 295, 296; 1 Hawk. P. C., c. 13, ss. 27, 28, 29; *R.* v. *Walters* (1688), 12 State Tr. 114, 122; *R.* v. *Byron* (*Lord*) (1765), 19 State Tr. 1177. If during a fight without deadly weapons one of the parties snatches up such a weapon and kills the other, this is manslaughter only (*R.* v. *Snow* (1776), 1 Leach, 151; *R.* v. *Taylor* (1771), 5 Burr. 2793, Lord MANSFIELD, C.J.), unless the prisoner intended from the first to use the deadly weapon (*R.* v. *Whiteley* (1829), 1 Lew. C. C. 173, BAYLEY, J.; *R.* v. *Kessal* (1824), 1 C. & P. 437, PARK, J; and see *R.* v. *Rankin* (1803), Russ. & Ry. 43). As to when killing during a sudden quarrel or during fighting amounts to murder, see p. 578, *ante*.

(*g*) *R.* v. *Canniff* (1840), 9 C. & P. 359, PATTESON, J.

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Prize fight.

1180. Amicable contests in wrestling or boxing are not unlawful, and a person who unintentionally causes the death of another in the course of such a contest is not guilty of culpable homicide (*h*); but a prize fight, or any contest either for money or otherwise in which the lives or health of the combatants are endangered, or in which the intention is to continue the contest until one of them is disabled or subdued by violent blows, is illegal, and if death results, the survivor and those who are present and encourage the fight are guilty of manslaughter (*i*).

Lawful games.

1181. Where a person accidentally kills another while playing at a lawful game which is not attended with apparent danger to life, and he is not actuated by any malicious motive or intention, or acting in a manner which he knows to be likely to produce death or injury, or indifferent whether death is or is not caused, the act causing the death is not criminal (*k*).

Negligence.

1182. A person upon whom the law imposes any duty (*l*), or who has taken upon himself any duty, tending to the preservation of

(*h*) *R.* v. *Canniff* (1840), 9 C. & P. 359; *R.* v. *Young* (1866), 10 Cox, C. C. 371, BRAMWELL, J.

(*i*) *Ibid.*; *R.* v. *Hargrave* (1831), 5 C. & P. 170; *R.* v. *Murphy* (1833), 6 C. & P. 103, LITTLEDALE, J.; *R.* v. *Orton* (1878), 14 Cox, C. C. 226, C. C. R.; *R.* v. *Coney* (1882), 8 Q. B. D. 534, 549, 553, C. C. R.

(*k*) Fost. 259, 260; 1 Hawk. P. C., c. 11, ss. 6, 7; *R.* v. *Bradshaw* (1878), 14 Cox, C. C. 83, BRAMWELL, L.J.; *R.* v. *Moore* (1898), 14 T. L. R. 229, HAWKINS, J. The rules of a game will not make lawful that which is in itself unlawful, nor, on the other hand, is a person guilty of manslaughter merely because he may have broken the rules (*ibid.*). Shooting at a mark or otherwise is a lawful recreation, but a person who shoots without taking proper precautions to avoid injury and so kills another is guilty of manslaughter (*R.* v. *Salmon* (1880), 6 Q. B. D. 79, C. C. R.).

(*l*) The non-contractual duties imposed by law are either statutory duties or those which arise at common law out of the position in which persons stand towards each other or towards the public.

With regard to the care necessary in the use of all dangerous things and in the conduct of all operations which, if carelessly conducted, may cause injury or death, such as riding, driving and navigation, the rule is that if one man is near to another, a duty lies upon him not to do that which may cause a personal injury to the other (*Heaven* v. *Pender* (1883), 11 Q. B. D. 503, C. A.; *Le Lievre* v. *Gould*, [1893] 1 Q. B. 491, C. A., *per* Lord ESHER, M.R., at p. 497, and *per* BOWEN, L.J., at p. 502).

The following are cases of manslaughter owing to negligent driving and riding:—*R.* v. *Walker* (1824), 1 C. & P. 320 (where the deceased was drunk); *R.* v. *Murray* (1852), 5 Cox, C. C. 509 (streets unusually crowded); *R.* v. *Grout* (1834), 6 C. & P. 629 (where the driver was near-sighted and should therefore have exercised more than usual care); *R.* v. *Timmins* (1836), 7 C. & P. 499 (omnibuses racing); *R.* v. *Mastin* (1834), 6 C. & P. 396 (prisoner and deceased were riding and said to be racing); *R.* v. *Swindall* (1846), 2 Car. & Kir. 230 (inciting to furious driving); *R.* v. *Dalloway* (1847), 2 Cox, C. C. 273 (where the accused was driving a cart without holding the reins; a child ran across the road and was killed; ERLE, C.J., directed the jury not to convict if they thought prisoner could not have prevented the death, if he had been holding the reins); *R.* v. *Jones* (1870), 11 Cox, C. C. 544 (contributory negligence, see p. 586, *post*); *R.* v. *Taylor* (1840), 9 C. & P. 672 (negligent navigation of river or at too great speed); *R.* v. *Spence* (1846), 1 Cox, C. C. 352 (liability of pilot); *R.* v. *Allen* (1835), 7 C. & P. 153; *R.* v. *Green* (1835), *ibid.*, 156 (liability of captain); *R.* v. *Williamson* (1844), 1 Cox, C. C. 97 (overloading and mismanagement of boat).

The following are cases of negligence in the use of a weapon or other dangerous thing likely to cause death in an improper place or without taking

proper precautions to avoid injury:—*R.* v. *Salmon* (1880), 6 Q. B. D. 79, C. C. R. (firing a long-range rifle in a field near roads and houses held to be manslaughter; *secus* where a gun was fired in the ordinary course by an artilleryman at a target under the direction of the prisoner, his superior officer, in a place not obviously improper; see *R.* v. *Hutchinson* (1864), 9 Cox, C. C. 555, BYLES, J.); *R.* v. *Campbell* (1869), 11 Cox, C. C. 323 (firing a gun at deceased, the jury apparently believing that prisoner did not know it was loaded); *R.* v. *Jones* (1874), 12 Cox, C. C. 628 (where LUSH, J., directed the jury that if the prisoner pointed the gun at deceased without examining whether it was loaded or not, and it happened to be loaded and death resulted, he was guilty of manslaughter; but if he had tried the gun with a rammer or otherwise and had reason to believe that it was not loaded, it would probably not have been manslaughter; see Fost. 263); *R.* v. *Weston* (1879), 14 Cox, C. C. 346, 352 (gun levelled by a poacher at a gamekeeper, but, as the jury found, without the intention of discharging it); *R.* v. *Archer* (1858), 1 F. & F. 351 (where during a struggle for a loaded gun, to the possession of which prisoner was entitled, it went off, and Lord CAMPBELL, C.J., directed a verdict of guilty on the ground that the prisoner had no right to take the gun by force); *R.* v. *Skeet* (1866), 4 F. & F. 931 (a similar case, but deceased, a gamekeeper, was entitled to take the gun); *R.* v. *Burton* (1721), 1 Stra. 481 (firing a pistol in a street); *R.* v. *Carr* (1832), 8 C. & P. 163 (negligent manufacture of a cannon or gun).

The following are cases of negligence with regard to railway trains etc.:—*R.* v. *Trainer* (1864), 4 F. & F. 105, 111 (where death occurred through a railway collision, and WILLES, J., held that an inferior officer, acting honestly, was justified in obeying the directions of a superior, which did not appear to him at the time to be improper or contrary to law); *R.* v. *Gray* (1865), 4 F. & F. 1098 (where a fireman was killed in a collision, but there was no evidence whether he or the accused, who was the driver, was looking out for signals, and WILLES, J., directed an acquittal); *R.* v. *Pargeter* (1848), 3 Cox, C. C. 191; *R.* v. *Birchall* (1866), 4 F. & F. 1087 (contributory negligence; as to this case, see p. 586, note (*c*), *post*); *R.* v. *Elliott* (1889), 16 Cox, C. C. 710 (where prisoner was a guard and there was no sufficient evidence of "gross negligence"); *R.* v. *Benge* (1865), 4 F. & F. 504; *R.* v. *Smith* (1869), 11 Cox, C. C. 210 (where LUSH, J., held that the prisoner, who was a servant of the owner of a private mining tramway and was employed by the owner to watch a public crossing which there was no statutory obligation upon the owner to have so watched, owed no duty to the public and was not punishable criminally for negligence in watching which resulted in the death of a person crossing the line; and see *R.* v. *Pittwood* (1902), 19 T. L. R. 37, WRIGHT, J.).

The following are cases of negligence with regard to machinery:—*R.* v. *Gregory* (1860), 2 F. & F. 153 (explosion on ship owing to inefficient valve); *R.* v. *Stokes* (1850), 4 Cox, C. C. 449 (leaving incompetent person in charge of colliery machinery; compare *R.* v. *Hilton* (1838), 2 Lew. C. C. 214, where the prisoner had, contrary to his duty, left an engine unattended; another person started it and was unable to stop it, thus causing the death of deceased, and ALDERSON, B., directed an acquittal on the ground that the death was not the consequence of the prisoner's act, but of that of the person who started the engine); *R.* v. *Haines* (1847), 2 Car. & Kir. 368 (neglecting ventilation of mine); *R.* v. *Hughes* (1857), 7 Cox, C. C. 301, C. C. R. (omission to place a stage over shaft of mine).

There is a duty upon workmen and others who throw rubbish etc., or allow it to fall from a height, not to endanger the lives of persons who may reasonably be expected to be in a place of public resort below. If they throw down such things without giving a sufficient warning which is likely to be heard, they are guilty of manslaughter; see 1 Hale, P. C. 472, 475; Fost. 262; *R.* v. *Hull* (1664), Kel. 40; *R.* v. *Fenton* (1830), 1 Lew. C. C. 179 (throwing stones down a mine); *R.* v. *Rigmaidon* (1833), 1 Lew. C. C. 180 (where death was caused by casks which had been insufficiently secured falling into the road).

If a man having a horse or other animal which he knows to be so vicious as to be dangerous turns it out into a place where there are paths on which to his knowledge people are likely to be, and the animal kills such a person, the owner is guilty of manslaughter (*R.* v. *Dant* (1865), Le. & Ca. 567,

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and see *R.* v. *Franklin* (1883), 15 Cox, C. C. 163; compare *Lowery* v. *Walker* (1909), 25 T. L. R. 608.

For other cases of manslaughter arising out of a duty imposed by law to do or not to do certain things, see also *R.* v. *Franklin* (1883), 15 Cox, C. C. 163; *R.* v. *Bruce* (1847), 2 Cox, C. C. 262 (causing death by rough play with a third person, which was held by ERLE, J., not to be manslaughter); *R.* v. *Sullivan* (1836), 7 C. & P. 641 (causing a cart to upset); *R.* v. *Martin* (1827), 3 C. & P. 211 (giving a very young child a considerable quantity of spirits to drink, see now Children Act, 1908 (8 Edw. 7, c. 67), s. 119); *R.* v. *Packard* (1841), Car. & M. 236; *R.* v. *Kempson* (1893), 28 L. Jo. 477 (where causing death by selling diseased meat was held to be manslaughter); *R.* v. *Wild* (1837), 2 Lew. C. C. 214 (where death was caused by kicking out a trespasser); *R.* v. *Errington* (1838), 2 Lew. C. C. 217 (where the accused set fire to straw intending only to frighten and death ensued).

A person who has the charge or care of a child or young person under the age of sixteen, and who by neglecting to provide it with proper medical aid causes or hastens its death, is guilty of manslaughter (*R.* v. *Downes* (1875), 1 Q. B. D. 25, C. C. R.). It was doubtful whether at common law a parent who caused his child's death by neglecting to supply medical aid upon the ground that it was against his religion to do so was guilty of manslaughter (see *R.* v. *Wagstaffe* (1868), 10 Cox, C. C. 530, WILLES, J.). But in *R.* v. *Downes*, *supra*, the court held that by the Poor Law Amendment Act, 1868 (31 & 32 Vict. c. 122), s. 37, the duty of supplying medical aid was cast upon the father, and that if death resulted from his neglect of that duty, he committed manslaughter. That statute is now repealed, but the section in question is re-enacted in a wider form by the Children Act, 1908 (8 Edw. 7, c. 67), s. 12. There must be affirmative proof that the death would not have occurred if such aid had been supplied (*R.* v. *Morby* (1882), 8 Q. B. D. 571, C. C. R.). In *R.* v. *Senior*, [1899] 1 Q. B. 283, 291, C. C. R., it was suggested by the court that the guilt of the parent might depend upon whether he had the necessary means to obtain the medical aid; this is, however, met by s. 12 (1) of the Children Act, 1908 (8 Edw. 7, c. 67), which requires him in such a case to take the necessary steps to procure medical aid under the Poor Law Acts; see also *R.* v. *Cook* (1898), 62 J. P. 712, BIGHAM, J. As to the duty of a mother to obtain such assistance during her confinement as may preserve the life of her child, where she has the means of procuring such assistance, see *R.* v. *Middleship* (1850), 5 Cox, C. C. 275; *R.* v. *Handley* (1874), 13 Cox, C. C. 79. *R.* v. *Izod* (1904), 20 Cox C. C. 690. And see *R.* v. *Jones* (1901), 19 Cox, C. C. 678.

There is a common law obligation, the neglect of which in such a way as to injure health is in itself a misdemeanour (*R.* v. *Friend* (1802), Russ. & Ry. 20; and see p. 623, *post*), to provide sufficient food, clothing, and bedding to any infant of tender years unable to provide for and take care of itself, whether it be the child, apprentice, or servant whom a person is obliged by duty or contract to provide for; and by the Children Act, 1908 (8 Edw. 7, c. 67), s. 12, *supra* (see further as to this Act, p. 624, *post*), the obligation is extended to all persons who have the custody, charge, or care of a child (as to "custody" see *R.* v. *Connor*, [1908] 2 K. B. 26). If death results from a neglect of this legal obligation, the person guilty of the neglect commits manslaughter; see *R.* v. *Waters* (1848), 1 Den. 356 (exposure of child); *R.* v. *Walters* (1841), Car. & M. 164 (exposure); *R.* v. *Conde* (1867), 10 Cox, C. C. 547 (neglect); *R.* v. *Bubb* (1850), 4 Cox, C. C. 455. As to the duty of the person having charge of the child to apply for Poor Law Relief if he is unable to provide for it, see Children Act, 1908 (8 Edw. 7, c. 67), s. 12; see also title INFANTS AND CHILDREN. If an adult who has the free control of his actions and is able to take care of himself voluntarily remains in the service of a master or under the charge of a person who does not supply him with sufficient food, the latter is not criminally responsible, if death ensues, but it is otherwise if the adult is reduced to such a state of body and mind as to be helpless and unable to take care of himself (*R.* v. *Smith* (1865), Le. & Ca. 607; see also *R.* v. *Shepherd* (1862), Le. & Ca. 147). As to a husband's responsibility for the death of his wife to whom he makes a separate allowance on account of his refusal to give her shelter, see *R.* v. *Plummer* (1844), 1 Car. & Kir. 600. A relieving officer who neglects or unjustifiably refuses to relieve a destitute person is

life (*m*), and who grossly neglects to perform that duty or performs it with gross negligence and thereby causes the death of another person, is guilty of manslaughter (*n*). What amount of negligence is to be regarded as gross is a question of degree for the jury, depending on the circumstances of each particular case (*o*). The law does not require the utmost caution that can be used; it is sufficient if reasonable precaution, and what is usual and ordinary in such cases, be taken (*p*).

Negligence must be personal.

To render such a person guilty of manslaughter the negligence must have been the direct and immediate cause of the death (*q*), and

guilty of manslaughter, if the latter dies in consequence of such refusal (*R.* v. *Curtis* (1885), 15 Cox, C. C. 746, HAWKINS, J.).

A person who undertakes the charge of one who is helpless, either from infancy, old age, lunacy, or other infirmity, is guilty of manslaughter if the death of the latter is caused by his culpable neglect (*R.* v. *Marriott* (1838), 8 C. & P. 425, PATTESON, J.; *R.* v. *Nicholls* (1875), 13 Cox, C. C. 75, BRETT, J.; *R.* v. *Instan*, [1893] 1 Q. B. 450, C. C. R.).

(*m*) A person who, whether he be a medical man or not, deals with dangerous medicines or undertakes a dangerous operation is bound to act with proper and reasonable skill and caution, and if by reason of want of such skill and caution death is occasioned he is guilty of manslaughter, but he is not responsible criminally for a mere error in judgment; see *R.* v. *Van Butchell* (1829), 3 C. & P. 629; *R.* v. *Williamson* (1807), 3 C. & P. 635; *R.* v. *Spiller* (1832), 5 C. & P. 333; *R.* v. *Simpson* (1829), 1 Lew. C. C. 172, 262; *R.* v. *Ferguson* (1830), 1 Lew. C. C. 181; *R.* v. *Tessymond* (1828), 1 Lew. C. C. 169; *R.* v. *Long* (1831), 4 C. & P. 398, 423; *R.* v. *Webb* (1834), 2 Lew. C. C. 196; *R.* v. *Spilling* (1838), 2 Mood. & R. 107; *R.* v. *Crick* (1859), 1 F. & F. 519; *R.* v. *Crook* (1859), 1 F. &. F. 521; *R.* v. *Bull* (1860), 2 F. & F. 201; *R.* v. *Markuss* (1864), 4 F. & F. 356; *R.* v. *Chamberlain* (1867), 10 Cox, C. C. 486; *R.* v. *Spencer* (1867), 10 Cox, C. C. 525; *R.* v. *Noakes* (1866), 4 F. & F. 920 (error of chemist in making up medicine).

(*n*) Stephen, Digest of the Criminal Law, 6th ed., p. 169, art. 232; see also Stephen, General View of Criminal Law, 2nd ed., p. 76; *R.* v. *Tessymond* (1828), 1 Lew. C. C. 169, BAYLEY, J.

(*o*) Stephen, Digest of the Criminal Law, 6th ed., p. 169, art. 232; *R.* v. *Markuss* (1864), 4 F. & F. 356, 358, WILLES, J.; *R.* v. *Noakes* (1866), 4 F. & F. 920, ERLE, C.J. Many views have been expressed, though mostly in civil cases, as to what constitutes "gross negligence." It has been said to be the same thing as "negligence" with the addition of a vituperative epithet (*Wilson* v. *Brett* (1843), 11 M. & W. 113, 115, ROLFE, B.). In *Cashill* v. *Wright* (1856), 6 E. & B. 891, 899, ERLE, J., said that the legal meaning of gross negligence is greater negligence than the absence of the ordinary care which under the circumstances a prudent man ought to have taken; such a degree of negligence as excludes the lowest degree of care, and which is said to amount to *dolus*. A higher degree of negligence is required to convict a person of manslaughter than to establish civil liability against him (*R.* v. *Noakes*, *supra*; *R.* v. *Doherty* (1887), 16 Cox, C. C. 306, 309, STEPHEN, J.). The mere fact that the death was caused by a civil wrong committed by the accused is not sufficient to establish a case of manslaughter (*R.* v. *Franklin* (1883), 15 Cox, C. C. 163, FIELD, J.; compare *R.* v. *Fenton* (1830), 1 Lew. C. C. 179). In *R.* v. *Williamson* (1807), 3 C. & P. 635, where a man midwife was indicted for manslaughter of a patient, Lord ELLENBOROUGH, C.J., directed the jury that to substantiate the charge the prisoner must have been guilty of criminal misconduct arising either from the grossest ignorance or the most criminal inattention; see also *R.* v. *Long* (1831), 4 C. & P. 398, 423; *R.* v. *Nicholls* (1875), 13 Cox, C. C. 75, BRETT, J.; *R.* v. *Elliott* (1889), 16 Cox, C. C. 710 (Ir.), O'BRIEN, J.).

(*p*) Fost. 264; *R* v. *Rigmaidon* (1833), 1 Lew. C. C. 180.

(*q*) *R.* v. *Pocock* (1851), 17 Q. B. 34, where road trustees liable to repair a road were held by the Court of Queen's Bench not chargeable with manslaughter, a person having been killed in consequence of their neglect to make a contract for the repair of it (*R.* v. *Ledger* (1862), 2 F. & F. 857).

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there must have been personal misconduct or personal negligence on the part of the accused (*r*); he is not responsible criminally if the death was directly caused in his absence by the negligence of his servants or others (*s*).

It is no defence that the death was caused by the negligence of others as well as of the prisoner; if death be occasioned by the act or default of several they are all guilty of manslaughter (*a*); but if the particular negligence imputed to the prisoner was not the proximate and efficient cause of the death, he cannot be convicted (*b*).

Contributory negligence.

1183. If the prisoner's negligent act or omission was the proximate and efficient cause of death, the fact that the deceased was himself negligent and so contributed to the accident or other circumstances by which the death was occasioned does not afford a defence to an indictment for manslaughter (*c*).

(iii.) *Justifiable Homicide.*

Justifiable homicide.

1184. Homicide is justifiable (1) where the proper officer, in conformity with the sentence of the law, executes a person legally condemned to death (*d*); (2) where an officer of justice or anyone acting in his aid, or a person legally entitled to detain a person as a prisoner, lawfully kills one who resists or is attempting to escape (*e*); (3) where the homicide is committed in self defence or in prevention of a forcible and atrocious crime.

Resistance to force.

1185. Where a forcible and violent felony is attempted upon the person of another, the party assaulted, or his servant, or any other person present, is entitled to repel force by force, and, if necessary, to kill the aggressor (*f*).

(*r*) *R.* v. *Allen* (1835), 7 C. & P. 153, 156, ALDERSON, B., and PARKE, J.; *R.* v. *Green* (1835), 7 C. & P. 156.

(*s*) *R.* v. *Bennett* (1858), Bell, C. C. 1, where the accused had unlawfully kept in his house a quantity of fireworks, which, through the negligence of his servants, were set on fire, and thus caused the death of the deceased, and it was held that the accused could not be convicted of manslaughter.

(*a*) *R.* v. *Haines* (1847), 2 Car. & Kir. 368, MAULE, J.; *R.* v. *Benge* (1865), 4 F. & F. 504, 509, PIGOTT, B.; *R.* v. *Salmon* (1880), 6 Q. B. D. 79, C. C. R.

(*b*) *R.* v. *Ledger* (1862), 2 F. & F. 857, ERLE, C.J.; *R.* v. *Bennett, supra.*

(*c*) *R.* v. *Longbottom* (1849), 3 Cox, C. C. 439, ROLFE, B.; *R.* v. *Walker* (1824), 1 C. & P. 320, GARROW, B. (where deceased was intoxicated); *R.* v. *Swindall* (1846), 2 Car. & Kir. 230, POLLOCK, C.B.; *R.* v. *Hutchinson* (1864), 9 Cox, C. C. 555, 557, BYLES, J.; *R.* v. *Jones* (1870), 11 Cox, C. C. 544, LUSH, J.; *R.* v. *Kew* (1872), 12 Cox, C. C. 355, BYLES, J.; compare *R.* v. *Waters* (1834), 6 C. & P. 328. The *dictum* of WILLES, J., in *R.* v. *Birchall* (1866), 4 F. & F. 1087, that a man was not criminally responsible for negligence for which he would not be responsible in an action, was expressly disapproved by LUSH, J., in *R.* v. *Jones, supra*, and has not been followed. But inasmuch as both criminal and civil liability in cases of negligence arises from the fact that the person liable is under a duty to do or not to do a certain thing, it is true, if cases of contributory negligence are excepted, that where there is no civil liability, there can be no criminal responsibility. It does not, of course, follow that in every case where there is a civil liability to pay damages the person so liable may also be convicted of manslaughter, inasmuch as a higher degree of negligence is necessary to constitute the crime than to fix the negligent person with a civil liability.

(*d*) See p. 575, *ante.*

(*e*) See p. 575, *ante.*

(*f*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 7; 1 Hale,

There must be a reasonable necessity for the killing, or at least an honest belief based upon reasonable grounds that there is such a necessity (*g*). The act causing death is only justifiable if it is done to protect the person doing it or some other person from serious violence, or from a reasonable apprehension of it (*h*).

It is not lawful to take the life of a person who is committing a larceny or other felony without violence or threats (*i*), or a simple assault (*k*), or only a misdemeanour without violence (*l*).

A woman is justified in killing a man who is attempting to ravish her (*m*).

Defence of dwelling-house etc.

1186. The owner of a dwelling-house, or any of his servants or lodgers, or any other person within the house, is justified in using force towards a person who is manifestly attempting to burn it, or to commit a burglary there, or to invade and enter it by violence; if the owner etc. in the use of such force kills such person he does not commit any crime (*n*).

Indictment.

A person lawfully defending himself or his habitation is not bound to retreat or to give way to the aggressor before killing him; he is even entitled to follow him and to endeavour to capture him; but if the aggressor is captured or is retreating without offering resistance and is then killed, the person killing him is guilty of murder (*o*).

(iv.) *Excusable Homicide.*

Excusable homicide.

1187. Killing by misadventure or misfortune without culpable negligence is excusable, and is subject to no punishment or forfeiture (*p*).

(v.) *Indictment for Murder or Manslaughter.*

Indictment.

1188. In an indictment for murder or manslaughter or for being accessory thereto it is not necessary to set forth the manner in which or the means by which the death was caused; it is sufficient

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P. C. 484; Fost. 274; 1 Hawk. P. C., c. 10, s. 21; *R.* v. *Bull* (1839), 9 C. & P. 22, VAUGHAN, J.; *R.* v. *Symondson* (1896), 60 J. P. 645, KENNEDY, J.

(*g*) See *R.* v. *Rose* (1884), 15 Cox, C. C. 540, LOPES, J.

(*h*) *R.* v. *Smith* (1837), 8 C. & P. 160; *R.* v. *Weston* (1879), 14 Cox, C. C. 346, 351, COCKBURN, C.J.; *R.* v. *Knock* (1877), 14 Cox, C. C. 1, LINDLEY, J.; *R.* v. *Symondson*, *supra*. As to self-defence, see *R.* v. *Carman Deana* (1909), 2 Cr. App. Rep. 75.

(*i*) *R.* v. *Scully* (1824), 1 C. & P. 319, GARROW, B.; 1 East, P. C. 273.

(*k*) *R.* v. *Bull* (1839), 9 C. & P. 22, VAUGHAN, J.; 1 Hale, P. C. 488.

(*l*) 1 Hale, P. C. 486; 1 East, P. C. 272; see *R.* v. *Dadson* (1850), 2 Den. 35. In defence of property against a person who is seeking to take it from him by a trespass the owner is justified in beating the trespasser to make him desist, but if in beating him he kills him, it is manslaughter (1 Hale, P. C. 485, 486).

(*m*) 1 Hale, P. C. 485; Fost. 274; 1 Hawk. P. C., c. 10, s. 21. The same will apply to a forcible attempt to commit sodomy (1 Hawk. P. C., c. 10, s. 21, n.).

(*n*) 1 Hale, P. C. 487; Fost. 273; 1 Hawk. P. C., c. 28, s. 21; *R.* v. *Meade* (1823), 1 Lew. C. C. 184, HOLROYD, J.

(*o*) Or perhaps of manslaughter, if the blood be still hot (Fost. 273; 1 East, P. C. 293); see, however, as to the necessity of retreating before giving a fatal blow, *R.* v. *Smith* (1837), 8 C. & P. 160, 162, BOSANQUET, J., and p. 609, *post*.

(*p*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 7; 1 Hale, P. C. 492; Fost. 264, 282. As to killing by correction, see p. 577, *ante*; in games and sports, p. 582, *ante*; by the use of dangerous weapons, p. 582, note (*l*), *ante*; in riding and driving, p. 582, note (*l*), *ante*; in the commission of a crime, p. 579, *ante*.

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in an indictment for murder to charge that the accused did feloniously, wilfully, and of his malice aforethought kill and murder the deceased, and in an indictment for manslaughter to charge that he did feloniously kill and slay the deceased (*q*).

Name of deceased.

The name of the deceased must, if it is known or can be ascertained with reasonable diligence, be stated in the indictment; if it cannot be so ascertained the deceased must be described as "a person to the jurors aforesaid unknown" (*r*).

Neither murder nor manslaughter can be tried at quarter sessions (*s*).

(vi.) *Evidence.*

Evidence *corpus delicti.*

1189. Where no body or part of a body has been found which is proved to be that of the person alleged to have been killed, an accused person should not be convicted of either murder or manslaughter, unless there is evidence either of the killing or of the death of the person alleged to be killed. In the absence of such evidence there is no onus upon the prisoner to account for the disappearance or non-production of the person alleged to be dead (*t*).

Circumstantial evidence.

1190. In murder, as in other criminal cases, a jury may convict on purely circumstantial evidence, but to do this they must be satisfied not only that the circumstances were consistent with the prisoner having committed the act, but also that the facts were such as to be inconsistent with any other rational conclusion than that he was the guilty person (*a*).

Malice.

1191. On an indictment for murder evidence of the existence of a bad feeling between the parties, or of former threats of violence by the prisoner against the deceased, or of other attempts made by him on the life of the deceased is admissible to prove malice (*b*).

Similar murders.

Evidence showing the commission by the accused of other similar murders either before or after the death which is the subject of the indictment, although inadmissible for the purpose of showing that the accused was a person likely from his criminal conduct or character to be guilty of the offence for which he is being tried, may

(*q*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 6. These provisions also apply to a coroner's inquisition (*R.* v. *Ingham* (1864), 5 B. & S. 257).

(*r*) *R.* v. *Clark* (1818), Russ. & Ry. 358; *R.* v. *Campbell* (1843), 1 Car. & Kir. 82; *R.* v. *Hicks* (1840), 2 Mood. & R. 302. A bastard child cannot be described by the name of its mother, until it has obtained it by reputation (*R.* v. *Clark*, *supra*; see also *R.* v. *Smith* (1833), 6 C. & P. 151; *R.* v. *Hogg* (1841), 2 Mood. & R. 380; *R.* v. *Willis* (1845), 1 Den. 80). Such a child, if unnamed, should be described as "then lately before born of the body of A. B." (*R.* v. *Hogg*, *supra*), or "a certain infant female child born of the body of A. B. and of tender age, to wit, of the age of two days and not named" (*R.* v. *Waters* (1848), 1 Den. 356). And see p. 335, *ante*.

(*s*) Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1.

(*t*) 2 Hale, P. C. 290; *R.* v. *Hindmarsh* (1792), 2 Leach, 569; *R.* v. *Hopkins* (1838), 8 C. & P. 591, Lord ABINGER, C.B.; *R.* v. *Cheverton* (1862), 2 F. & F. 833, ERLE, C.J.; and see p. 378, *ante*.

(*a*) *R.* v. *Hodge* (1838), 2 Lew. C. C. 227, ALDERSON, B.; and see *R.* v. *Gardner* (1859), 1 F. & F. 669.

(*b*) *R.* v *Clewes* (1830), 4 C. & P. 221; *R.* v. *Hagan* (1873), 12 Cox, C. C. 357, ARCHIBALD, J.; *R.* v. *Weston* (1879), 14 Cox, C. C. 346, 350, COCKBURN, C.J.

nevertheless be admissible to show that the act charged in the indictment was designed and not accidental, or to rebut a defence which would otherwise be open to the prisoner (*c*).

Dying declarations

1192. Upon the trial of an indictment for murder or manslaughter (*d*) a verbal or written statement made by the deceased person whose death is the subject of the charge (*e*), although such statement was not upon oath and was not made in the presence of the accused, is admissible in evidence either against or for (*f*) the accused, provided that at the time when such statement was made the person making it had an unqualified belief, without hope, that he was about to die almost immediately (*g*).

The question whether the deceased had such a belief in impending

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(*c*) *R.* v. *Geering* (1849), 18 L. J. (M. C.) 215, POLLOCK, C.B.; *R.* v. *Garner* (1864), 4 F. & F. 346, WILLES, J.; *R.* v *Cotton* (1873), 12 Cox, C. C. 400, ARCHIBALD, J.; *R.* v. *Roden* (1874), 12 Cox, C. C. 630, LUSH, J.; *R.* v. *Heesom* (1878), 14 Cox, C. C. 40, LUSH, J. (where the death proved was subsequent to the murder alleged in the indictment); *Makin* v. *A.-G. for New South Wales*, [1894] A. C. 57, 65, P. C. The ruling of MARTIN, B., and WILDE, B., in *R.* v. *Winslow* (1860), 8 Cox, C. C. 397, to the contrary effect, is inconsistent with *R.* v. *Geering*, *supra*, *R.* v. *Flannagan* (1884), 15 Cox, C. C. 403, BUTT, J., *Makin* v. *A.-G. of New South Wales*, *supra*, and *R.* v. *Bond*, [1906] 2 K. B. 389, 402, and cannot be treated as law. In a case of manslaughter from negligence MAULE, J., ruled that evidence of other instances of either the prisoner's negligence, or of his carefulness, under other similar circumstances was inadmissible (*R.* v. *Whitehead* (1848), 3 Car. & Kir. 202; see, however, *R.* v. *Williamson* (1807), 3 C. & P. 635, where Lord ELLENBOROUGH, C.J., appears to have admitted evidence on behalf of a man midwife of his skill and attention on other occasions). It is submitted that in cases of manslaughter evidence of this kind should be confined to the prisoner's general character for skill and diligence, though such evidence may be given by persons whom he may have attended (see *R.* v. *Long* (1830), 4 C. &. P. 398, 404, where twenty-nine witnesses were allowed by PARK, J., to give evidence that they had been patients of the prisoner and were satisfied with his skill and diligence). See also p. 380, *ante*.

(*d*) And only in such cases (*R.* v. *Mead* (1824), 2 B. & C. 605; *R.* v. *Hutchinson* (1822), *ibid.* 608, n.; *R.* v. *Lloyd* (1830), 4 C. & P. 233; *R.* v. *Newton* (1859), 1 F. & F. 641; *R.* v. *Hind* (1860), 8 Cox, C. C. 300, C. C. R.). As to the circumstances under which the evidence of a witness who is dangerously ill may be taken before a magistrate and in the presence of the accused under the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 6, see pp. 327, 366, *ante*. A deposition irregularly taken, and therefore inadmissible under that section, may nevertheless be admissible as a dying declaration (*R.* v. *Clarke* (1859), 2 F. & F. 2).

(*e*) See *R.* v. *Mead* and the other cases cited in the last note. An exception was, however, made in *R.* v. *Baker* (1837), 2 Mood. and R. 53, where, two persons having been poisoned by poison administered on one occasion, upon the trial of the prisoner for the murder of one of them, COLTMAN, J., admitted a dying declaration made by the other.

(*f*) *R.* v. *Scaife* (1836), 1 Mood. & R. 551, COLERIDGE, J.

(*g*) *R.* v. *Jenkins* (1869), L. R. 1 C. C. R. 187, 192, 193. In this case KELLY, C.B., cited and adopted observations made by judges in the three following cases:—*R.* v. *Woodcock* (1789), 1 Leach, 500, EYRE, C.B., "every hope of this world gone"; *R.* v. *Peel* (1860), 2 F. & F. 21, WILLES, J., "settled hopeless expectation of death"; *R.* v. *Hayward* (1833), 6 C. & P. 157, TINDAL, C.J., "any hope of recovery, however slight, renders the evidence of such declaration inadmissible." The following are authorities prior to *R.* v. *Jenkins*, *supra*:—*R.* v. *Welbourn* (1792), 1 Leach, 503, n.; *R.* v. *Dingler* (1791), 2 Leach, 561; *R.* v. *Tinckler* (1781), 1 East, P. C. 354; *R.* v. *Qualter* (1854), 6 Cox, C. C. 357; *R.* v. *Fagent* (1835), 7 C. & P. 238, where the declaration was held to be inadmissible, because at a later period the deceased showed some hope of recovery See

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death as to make a declaration admissible as a dying declaration is for the judge, and not for the jury (*h*).

A statement made in the first instance under such circumstances as to render it inadmissible as a dying declaration may be admitted as evidence, if it is afterwards repeated by the deceased or by some other person at his request and assented to by him under circumstances which would have rendered it admissible, if it had been then made for the first time (*i*).

It is no objection to the admissibility of a dying declaration that it is made in answer to leading questions, though that fact may affect its weight as evidence (*k*).

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also *R.* v. *Taylor* (1848), 3 Cox, C. C. 84, and *R.* v. *Hubbard* (1881), 14 Cox, C. C. 565, in which last case HAWKINS, J., declined to exclude the declaration, because the deceased afterwards thought she would recover; *R.* v. *Errington* (1838), 2 Lew, C. C. 148; *R.* v. *Megson* (1840), 9 C. & P. 418; *R.* v. *Thomas* (1843), 1 Cox, C. C. 52; *R.* v. *Brooks* (1843), 1 Cox, C. C. 6; *R.* v. *Christie* (1821), Carrington, Criminal Law, 232; *R.* v. *Crockett* (1831), 4 C. & P. 544; *R.* v. *Ashton* (1837), 2 Lew. C. C. 147; *R.* v. *Spilsbury* (1835), 7 C. & P. 187; *R.* v. *Reaney* (1857), 7 Cox, C. C. 209, C. C. R.; *R.* v. *Whitworth* (1858), 1 F. & F. 382; *R.* v. *Mackay* (1868), 11 Cox, C. C. 148; *R.* v. *Forester* (1866), 4 F. & F. 857. The following are later cases than *R.* v. *Jenkins*, *supra*:—*R.* v. *Osman* (1881), 15 Cox, C. C. 1, LUSH, L.J. (where the statement of the deceased that she was sure she was going to die was held insufficient to render the declaration admissible); compare *R.* v. *Goddard* (1882), 15 Cox, C. C. 7 (where the deceased said "I am dying, look to my children," and her declaration was admitted by HAWKINS, J.); *R.* v. *Cowle* (1907), 71 J. P. 152 (where the deceased said "I'm dying," and the declaration was admitted by GRANTHAM, J.); and *R.* v. *Abbott* (1903), 67 J. P. 151 (where the deceased when in great pain said several times, "I am dying," but KENNEDY, J., refused to admit the declaration); see also *R.* v. *Smith* (1887), 16 Cox, C. C. 170; *R.* v. *Mitchell* (1892), 17 Cox, C. C. 503; *R.* v. *Gloster* (1888), 16 Cox, C. C. 471, approved in *R.* v. *Perry* (1909), 25 T. L. R. 676. In *R.* v. *Edmunds* (1909), 25 T. L. R. 658, C. C. A., it was held that the deposition of a woman taken when she was expected to recover, and on a charge of manslaughter, was properly admitted at the trial of the prisoner for the murder of the woman. With regard to the dying declaration of a child, in *R.* v. *Pike* (1829), 3 C. & P. 598, PARK, J., refused to admit that of a child of four years of age upon the ground that it was impossible that it could have had that idea of a future state which is necessary to make such a declaration admissible. But a dying declaration of a child of ten years of age was held to have been rightly admitted in *R.* v. *Perkins* (1840), 2 Mood. C. C. 135.

The fact that the deceased believed that his death was impending may be shown by statements made by him at the time, or by evidence that his physical condition or the nature of the wounds inflicted upon him was such that he must have so believed (*R.* v. *Woodcock* (1789), 1 Leach, 500; *R.* v. *Johns* (1790), 1 Leach, 504, n.; *R.* v. *Bonner* (1834), 6 C. & P. 386; *R.* v. *Cleary* (1862), 2 F. & F. 850; *R.* v. *Morgan* (1875), 14 Cox, C. C. 337). In the last-mentioned case, however, DENMAN, J., appears to have been not without doubt as to the admissibility of a declaration which depended only upon evidence of the latter class. See also *R.* v. *Bedingfield* (1879), 14 Cox, C. C. 341, 343, 344, where COCKBURN, C.J., declined to presume a woman's knowledge of impending death, although her throat was cut and she died in a few minutes after making the declaration; and see *R.* v. *Curtis* (1905), 21 T. L. R. 87.

(*h*) *R.* v. *Hucks* (1816), 1 Stark. 521, 523; *R.* v. *Goddard* (1882), 15 Cox, C. C. 7, HAWKINS, J.; *R.* v. *Whitmarsh* (1898), 62 J. P. 711, BIGHAM, J.

(*i*) *R.* v. *Steele* (1872), 12 Cox, C. C. 168, LUSH, J.

(*k*) *R.* v. *Fagent* (1835), 7 C. & P. 238; *R.* v. *Smith* (1865), Le. & Ca. 607, 612, C. C. R. But in *R.* v. *Mitchell* (1892), 17 Cox, C. C. 503, CAVE, J., refused to admit a written declaration in narrative form, signed by the deceased and taken down at the time from her answers to questions, on the ground that both questions and answers ought to have been written down verbatim, and this ruling was followed by BRUCE, J., in *R.* v. *Smith* (1901), 65 J. P. 426. The

The lapse of a considerable interval between the making of the declaration and the death of the deceased does not render it inadmissible, if at the time when it was made he had the conviction of immediately impending death (*l*).

A dying declaration by a person who is by law incompetent as a witness is inadmissible (*m*).

Nothing is evidence in a dying declaration which would not be evidence if the party were a witness; what the declarant says as to facts is receivable, but not what he says as to matters of opinion (*n*).

Statements by deceased.

1193. Statements by the deceased made immediately upon the occurrence which caused the death, but not under such circumstances as would render them admissible as dying declarations, may be admitted in evidence as part of the *res gestæ*, but the extent to which they are so admissible is doubtful (*o*).

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rulings of CAVE, J., and BRUCE, J., in the two last-mentioned cases appear to conflict with *R.* v. *Smith*, *supra*, as the declaration in that case was obtained by questions but was reduced into writing in narrative form (see pp. 612, 613 of the report). In *R.* v. *Bottomley* (1903), 115 L. T. Jo. 88, LAWRANCE, J., dissented from *R.* v. *Mitchell* (1892), 17 Cox, C. C. 503. It is submitted that where a written declaration is for any reason of this kind inadmissible, the writer of it, in giving evidence, may use it to refresh his own recollection of the questions which were asked and of the answers given by the deceased, although, if the declaration itself would be evidence, it must be put in and secondary evidence of its contents cannot be given (*R.* v. *Trowter* (1722), 12 Vin. Abr. 119; *R.* v. *Gay* (1835), 7 C. & P. 230, COLERIDGE, J.). The fact that the deceased knew of the near approach of death need not appear from the written declaration, but may be proved *aliunde* (*R.* v. *Hunt* (1847), 2 Cox, C. C. 239, POLLOCK, C.B.).

(*l*) *R.* v. *Bernadotti* (1869), 11 Cox, C. C. 316, BRETT, J. (where there was an interval of three weeks); and see *R.* v. *Mosley* (1825), 1 Lew. C. C. 79.

(*m*) *R.* v. *Drummond* (1784), 1 Leach, 337. As to what witnesses are incompetent, see p. 400, *ante*.

(*n*) *R.* v. *Sellers* (1796), Carrington, Criminal Law, 233.

(*o*) In *R.* v. *Foster* (1834), 6 C. & P. 325, upon an indictment for manslaughter by furious driving, GURNEY, B., and PARKE, J., admitted as evidence a statement made by the deceased in the absence of the prisoner to a person immediately after the accident, upon the authority of *Aveson* v. *Kinnaird* (*Lord*) (1805), 6 East, 188, 193; see also *Thompson* v. *Trevanion* (1693), Skin. 402. In *R.* v. *Lunny* (1854), 6 Cox, C. C. 477 (Ir.) (a case of murder), MONAHAN, C.J., admitted evidence of a statement made by the deceased to the first person who saw him after, though apparently not immediately after, the blows which caused death. In *R.* v. *Bedingfield* (1879), 14 Cox, C. C. 341 (murder), it was sought to put in evidence a statement made by the deceased, who came suddenly into a room with her throat cut from a room in which she had just left the prisoner, who also had his throat cut; COCKBURN, C.J., refused to admit the statement as it was not part of anything done, or anything said while something was being done, but something said after the act was done; but as to this decision see 1 Taylor on Evidence, 10th ed., 412, n. In *R.* v. *Goddard* (1882), 15 Cox, C. C. 7 (murder), HAWKINS, J., refused to admit as part of the *res gestæ* a statement of the deceased as to who inflicted the mortal injuries upon her, although made ten minutes after they were inflicted, but he afterwards admitted the statement as a dying declaration, as the deceased had also at the same time said she was dying.

A statement made by the deceased before the injury causing the death may be admitted to prove his condition of health at the time of the statement (*R.* v. *Johnson* (1847), ALDERSON, B.; *R.* v. *Gloster* (1888), 16 Cox, C. C. 471, 473, CHARLES, J.), or where it is made in the course of the office or business of the deceased (*R.* v. *Buckley* (1873), 13 Cox, C. C. 293, LUSH, J., in which case the deceased was a police officer, and the statement admitted was a verbal report to

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(vii.) *Verdict and Punishment.*

Verdict.

1194. Upon an indictment for murder the jury may convict of manslaughter (*p*), if there is anything in the evidence to rebut the *primâ facie* presumption of murder (*q*).

A person tried for the murder of any child may, if acquitted of that offence, and if the facts so warrant, be convicted by the same jury of concealment of the birth of the child (*r*).

If two or more persons are jointly indicted for murder, the court may order separate trials, if the justice of the case so requires (*s*).

Punishment.

1195. The punishment for murder is death, and the offender must be executed and buried within the walls of the prison where he is confined at the time of execution (*t*).

1196. The punishment for manslaughter is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years or a fine with or without such penal servitude or imprisonment; the offender may be required to find sureties for good behaviour (*a*).

Woman pleading pregnancy.

1197. If a woman is convicted of murder, she may, when called upon after judgment to say why execution should not follow on the judgment, plead that she is quick with child (*b*).

SUB-SECT. 2.—*Suicide.*

Suicide.

1198. Suicide is self murder by a person of sound understanding and of an age sufficient to be convicted of murder. It is a felony at common law. If a coroner's jury finds a verdict of suicide in respect of any person, the coroner is to give directions for the

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his superior as to where he was about to go); but not where it is a statement of intention, not made by the deceased in the course of duty (*R.* v. *Wainwright* (1875), 13 Cox, C. C. 171, COCKBURN, C.J.; and see *R.* v. *Pook* (1871), *ibid.* 172, n., BOVILL, C.J.), nor where it is a statement as to the person by whom, or the manner in which, certain symptoms were caused (*R.* v. *Gloster*, *supra*); see also *R.* v. *Nicholas* (1846), 2 Car. & Kir. 246, 248, and *R.* v. *Horsford*, mentioned by HAWKINS, J., in *R.* v. *Rowland* (1898), 62 J. P. 459. In *R.* v. *Edwards* (1872), 12 Cox, C. C. 230 (murder), QUAIN, J., admitted evidence of a statement made by the deceased eight days before the murder as to threats which she said the prisoner had used towards her—*sed quære.*

(*p*) *R.* v. *Mackalley* (1612), 9 Co. Rep. 61 b, 67 b; *R.* v. *Greenwood* (1857), 7 Cox, C. C. 404, and of the common law misdemeanour of an attempt to commit murder (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 9, and see p. 593, *post*).

(*q*) *R.* v. *Maloney* (1861), 9 Cox, C. C. 6, BYLES, J.; *R.* v. *French* (1879), 14 Cox, C. C. 328.

(*r*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 60; see p. 598, *post*.

(*s*) *R.* v. *Jackson* (1857), 7 Cox, C. C. 357, BRAMWELL, B., where the prisoners had made statements implicating each other.

(*t*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 1, 3; Capital Punishment Amendment Act, 1868 (31 & 32 Vict. c. 24), ss. 2, 6, and see s. 5 as to the holding of an inquest upon the body. As to punishment of persons under sixteen, see Children Act, 1908 (8 Edw. 7, c. 67), s. 103; and p. 420, *ante*.

(*a*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 5; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*b*) This must apparently be alleged by her, and not by her counsel (*R.* v. *Hunt* (1847), 2 Cox, C. C. 261, ERLE, J.). As to "quick with child," see Taylor, Medical Jurisprudence, 5th ed., II., 39; and as to the plea, see p. 375, *ante*.

interment of such person in a churchyard or other burial ground (*c*). The rites of Christian burial are not authorised to be performed on the interment of the remains of a person who has committed suicide, unless the deceased is shown to have been *non compos mentis* at the time.

An attempt to commit suicide is a common law misdemeanour (*d*), punishable by fine or imprisonment without hard labour.

SUB-SECT. 3.—*Attempts to Murder.*

Administering poison.

1199. It is by statute (*e*) a felony to administer or cause to be administered to or to be taken by any person any poison or other destructive thing (*f*), or by any means whatsoever to wound or to cause grievous bodily harm to any person (*g*), with intent in any of such cases to commit murder. The indictment must allege what substance was administered and that it was a poison or a destructive thing (*h*).

The punishment for this offence is penal servitude for life or for

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(*c*) Interments (felo de se) Act, 1882 (45 & 46 Vict. c. 19), s. 4. See titles CORONERS, Vol. VIII., p. 273; BURIAL AND CREMATION, Vol. III., p. 561.

(*d*) *R.* v. *Doody* (1854), 6 Cox, C. C. 463. If the defendant was drunk at the time, his drunkenness, though no excuse in itself, is a material fact to be considered by the jury in deciding whether he really intended to destroy himself (*ibid.*). Suicide is not murder within the meaning of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), and the attempt to commit it is therefore triable at quarter sessions (*R.* v. *Burgess* (1852), 32 L. J. (M. C.) 55, C. C. R.). As to an agreement or incitement to commit suicide, see p. 573, *ante*.

(*e*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 11, and see p. 610, note (*o*), *post*.

(*f*) To constitute the administering there need not be a manual delivery to the person intended to be poisoned; it is sufficient that poison is prepared and intentionally left in a place where he would be likely to take it (*R.* v. *Harley* (1830), 4 C. & P. 369, PARK, J.; *R.* v. *Dale* (1852), 6 Cox, C. C. 14, WIGHTMAN, J.). If the poison is taken by some person for whom it was not intended, this is an administration to the person who has actually taken it (*R.* v. *Lewis* (1833), 6 C. & P. 161, GURNEY, B.; *R.* v. *Michael* (1840), 9 C. & P. 356, ALDERSON, B.); see, however, *R.* v. *Ryan* (1839), 2 Mood & R. 213, in which PARKE, B., doubted the correctness of the ruling in *R.* v. *Lewis*, *supra*.

(*g*) As to wounding, see p. 600, *post*; as to grievous bodily harm, p. 601, *post*. It is not necessary that the wound should be near a vital part or of a dangerous nature likely to cause death (*R.* v. *Griffith* (1824), 1 C. & P. 298, PARK, J.). But there must be a positive intention to murder, and it is not sufficient that if death had resulted, the prisoner would have been guilty of murder, unless he actually intended to commit that crime (*R.* v. *Cruse* (1838), 8 C. & P. 541, PATTESON, J.; *R.* v. *Jones* (1840), 9 C. & P. 258).

(*h*) *R.* v. *Powles* (1831), 4 C. & P. 571. If a substance poisonous in itself is administered with intent to murder, the offence is committed, although owing to a mistake of the prisoner the quantity administered, or the form in which it is administered, is such as to render the substance innocuous (*R.* v. *Cluderay* (1850) 4 Cox, C. C. 84, C. C. R.). In *R.* v. *Cadman* (1825), 1 Mood. C. C. 114, it appears to have been held by the judges that there was no administration, unless some of the poison was swallowed, and that taking it into the mouth only is not enough to constitute an administration; but the reports of this case and the statement of PARK, J., in *R.* v. *Harley*, *supra*, as to his recollection of it do not altogether agree, and in *R.* v. *Walford* (1898), 34 L. J. 116, WILLS, J., declined to follow it. In any such case also the prisoner could now be convicted of attempting to administer under s. 14, see p. 594, *post*.

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not less than three years, or imprisonment with or without hard labour for not more than ten years (*i*).

Infliction of injury with intent to murder.

1200. Anyone is by statute (*k*) guilty of a felony :—

(1) Who by the explosion of gunpowder or other explosive substance destroys or damages any building with intent to commit murder (*l*);

(2) Who sets fire to any ship or vessel, or any part thereof or any part of the tackle, apparel, or furniture thereof, or any goods therein, or casts away or destroys any ship or vessel, with intent in any such case to commit murder (*m*);

(3) Who attempts to administer to or attempts to cause to be administered to or to be taken by any person any poison or other destructive thing, or to shoot at any person, or by drawing a trigger or in any other manner to attempt to discharge any kind of loaded arms (*n*) at any person (*o*), or to attempt to drown, suffocate, or strangle any person, with intent in any of such cases to commit murder, whether any bodily injury be inflicted or not (*p*);

(4) Who by any means other than those specified above attempts to commit murder (*q*).

(*i*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 11 (see also as to attempting to administer poison, s. 14); Penal Servitude Act, 1891 (54 & 54 Vict. c. 69), s. 1. These offences are not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1). As to other attempts see *infra*.

(*k*) *Ibid.*, ss. 12—15.

(*l*) *Ibid.*, s. 12.

(*m*) *Ibid.*, s. 13.

(*n*) Guns, pistols, or other arms loaded in the barrel with gunpowder or any other explosive substance, and ball, shot, slug, or other destructive material, are deemed to be loaded arms within the meaning of the Act, although the attempt to discharge the same may fail from want of proper priming or from any other cause (*ibid.*, s. 19). A revolver loaded in some of its chambers is a loaded arm within the meaning of s. 14, although when the prisoner pulled the trigger the hammer fell on an unloaded chamber (*R.* v. *Jackson* (1890), 17 Cox, C. C. 104, CHARLES, J.). A box or can containing explosives and detonators is not a "loaded arm" within the meaning of the section (*R.* v. *Mountford* (1835), 7 C. & P. 242, WILLIAMS, J.), but the offender will be punishable upon an indictment under s. 15 (see *infra*); see as to explosions caused by such means, p. 603, *post*.

(*o*) As to attempts to shoot, see p. 600, *post*.

(*p*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 14. Where the prisoner shot at a person mistaking him for another whom he intended to kill, the indictment alleging the intent to be to murder the former, and the jury found that the prisoner had no intention to murder the person killed, a verdict of acquittal was entered (*R.* v. *Holt* (1836), 7 C. & P. 518); see also *R.* v. *Jarvis* (1837), 2 Mood. & R. 40; *R.* v. *Smith* (1856), 7 Cox, C. C. 51, C. C. R.). The indictment may, therefore, allege only a general intent to murder.

(*q*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 15. The other means specified in this section only include methods of attempting to commit murder which are not *ejusdem generis* with the means mentioned in ss. 11, 12, 13 and 14 (*R.* v. *Brown* (1883), 10 Q. B. D. 381, 384, C. C. R.). An attempt to commit suicide is not an attempt to commit murder under this section, and it remains a common law misdemeanour (*R.* v. *Burgess* (1862), Le. & Ca. 258, C. C. R.). In *R.* v. *Donovan* (1850), 4 Cox, C. C. 399, where a woman had been injured by jumping from a window to avoid the prisoner's violence, ALDERSON, B., held that the prisoner could not be convicted of attempting to

The punishment for any such offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*a*).

SUB-SECT. 4.—*Conspiracy to Murder.*

Conspiracy to murder.

1201. Anyone is by statute (*b*) guilty of a misdemeanour (1) who conspires to murder any person, whether a British subject or not, and whether within the King's dominions or not; or (2) who solicits, encourages, persuades or endeavours to persuade, or proposes to anyperson to murder any other person, whether a British subject or not, and whether within the King's dominions or not.

The punishment is penal servitude for ten years or for not less than three years, or imprisonment with or without hard labour for not more than two years (*c*).

Where an agreement to murder is proved, it is not necessary to show that the conspirators were agreed as to the exact means of accomplishing their end (*d*).

Persons jointly indicted for this offence may be tried separately, if the court so directs, and if in such a case one is convicted, the fact that the others have not yet been tried is no ground for postponing judgment upon the one convicted (*e*).

Incitement to murder.

1202. An article or letter in a newspaper may be an incitement to murder within the meaning of the Offences against the Person Act, 1861 (*f*), though no particular person be named, if the incitation is directed against the members of a particular class (*g*).

The communication containing the incitement or endeavour to persuade must be proved to have reached the person intended to be incited, but it is not necessary to show that his mind was affected by it (*h*). If the communication cannot be proved to have reached him, the accused may be convicted of the common law misdemeanour of an attempt to commit the crime (*i*).

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murder her, unless the jury were satisfied that he intended at the time to make her jump out; see as to such cases p. 572, *ante*, and the authorities there cited.

(*a*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 12—15; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*b*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 4.

(*c*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*d*) *R.* v. *Banks* (1873), 12 Cox, C. C. 393, 398, QUAIN, J.

(*e*) *R.* v. *Ahearne* (1852), 6 Cox, C. C. 6, C. C. R. (Ir.), and see pp. 264, 592, *ante*.

(*f*) 24 & 25 Vict. c. 100, s. 4.

(*g*) *R* v. *Most* (1881), 7 Q. B. D. 244, C. C. R.; *R.* v. *Antonelli* (1905), 70 J. P. 4, PHILLIMORE, J.

(*h*) *R* v. *Fox* (1870), 19 W. R. 109, C. C. R. (Ir.); *R.* v. *Krause* (1902), 66 J. P. 121, Lord ALVERSTONE, C.J.

(*i*) *R.* v. *Krause*, *supra*; and see *R.* v. *Ransford* (1874), 13 Cox, C. C. 9, C. C. R. In the case of a newspaper the production of a copy published by the accused and purchased from him or his agents is some evidence that the incitement reached persons intended to be incited (*R.* v. *M'Carthy*, [1903] 2 I. R. 146).

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SUB-SECT. 5.—*Threatening to Murder.*

Threatening to murder.

1203. Everyone is by statute (*k*) guilty of a felony who maliciously sends, delivers, or utters, or directly or indirectly causes to be received knowing the contents thereof, any letter or writing threatening to kill or murder any person.

The punishment for this offence is penal servitude for ten years or for not less than three years, or imprisonment with or without hard labour for not less than two years (*l*).

SUB-SECT. 6.—*Procuring Abortion.*

Procuring abortion.

1204. It is a felony by statute (*m*) (1) for any woman with child unlawfully to administer to herself any poison or other noxious thing or to use any instrument or other means whatsoever with intent to procure her own miscarriage; or (2) for any person to administer to or cause to be taken by any woman, whether she be with child or not, any poison or noxious thing with intent to procure her miscarriage, or to use any instrument or other means with that intent.

Taking drugs etc.

1205. If a woman takes a substance which is in fact harmless, believing it to be a noxious thing and with intent to procure her miscarriage, she is guilty of the common law misdemeanour of an attempt to procure abortion (*n*). In order to constitute the statutory offence the thing supplied or administered must be proved to be noxious (*o*).

The quantity of an otherwise noxious drug may be so small as to take the case out of the statute (*p*); and a large dose of a drug which is harmless when taken in small quantities may be a noxious thing within the meaning of the statute (*q*).

If a person procures poison for a woman with intent to procure her miscarriage, to which intent she is a party, and she does in fact take it, though in his absence, he may be convicted of the felony of causing it to be taken by the woman, and not merely of the misdemeanour of procuring it with that intent (*a*).

A woman cannot be convicted of administering poison to herself with intent to procure her own miscarriage, or of procuring poison

(*k*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 16. To put a letter containing threats to murder in a place where it is likely to be seen and read by the person to whom it is directed is a sending or uttering of the letter within the statute (*R.* v. *Jones* (1851), 5 Cox, C. C. 226, *per* PATTESON, J.); so also is the delivery of the letter to another to be posted (*R.* v. *Girdwood* (1776), 1 Leach, 142).

(*l*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 16; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not excluded from the jurisdiction of quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*m*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 58.

(*n*) *R.* v. *Brown* (1899), 63 J. P. 790, DARLING, J.

(*o*) *R.* v. *Isaacs* (1862), Le. & Ca. 220.

(*p*) *R.* v. *Perry* (1847), 2 Cox, C. C. 223.

(*q*) *R.* v. *Cramp* (1880), 5 Q. B. D. 307, C. C. R.; see, however, *R.* v. *Hennah* (1877), 13 Cox, C. C. 547, decided under Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 24.

(*a*) *R.* v. *Wilson* (1856), Dears. & B. 127; *R.* v. *Farrow* (1857), Dears. & B. 164.

with such intent, unless she be in fact with child. But though she be not pregnant, she may be convicted of conspiracy to procure abortion (*b*), or of aiding and abetting others in committing the felony of administering poison or some noxious thing to her with intent to procure her miscarriage (*c*).

To prove the intent with which the noxious thing was administered or the instrument used, evidence showing that the prisoner had on previous occasions used similar means with the avowed intention of procuring abortion, or that he or she had previously admitted having often done the same thing, is admissible (*d*).

The punishment for such offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*e*).

Procuring noxious thing.

1206. Everyone is by statute (*f*) guilty of a misdemeanour who supplies or procures any noxious thing, or any instrument or thing whatsoever, knowing that it is intended to be unlawfully used with intent to procure the miscarriage of a woman, whether she be with child or not.

A person who supplies something which he believes to be noxious for the purpose of procuring miscarriage cannot be convicted of this misdemeanour, unless it is shown as a fact that the substance in question is noxious for that purpose (*g*). If he knows the article supplied to be harmless, he cannot be convicted of inciting the woman to commit an offence against the statute, although he knows that she will take it in the belief that it is noxious and with intent to procure abortion (*h*).

The fact that medicine supplied by the accused is followed by illness and a miscarriage is evidence that the thing supplied is noxious (*i*).

The offence of supplying a noxious drug is complete even if the intention to use it for the purpose of procuring abortion exists only in the mind of the person supplying it (*a*).

The punishment for this offence is penal servitude for not more

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(*b*) *R.* v. *Whitchurch* (1890), 24 Q. B. D. 420, C. C. R.

(*c*) *R.* v. *Sockett* (1908), 72 J. P. 428, C. C. A.

(*d*) *R.* v. *Bond*, [1906] 2 K. B. 389, 405, 417. But such evidence should be admitted with great caution. It should only be admitted where the prisoner has suggested that the administration of the drug or the use of the instrument was legitimate or accidental on his part, and not where the defence is a denial of the act itself. And proof of only one other similar case, without any special connection with the case charged in the indictment, ought not to be admitted, the object of evidence of this kind being to prove a systematic course of conduct by the prisoner in such cases and so to negative the defence that his action on the particular occasion was legitimate or accidental (*ibid.*). See also pp. 380, 589, *ante*.

(*e*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 58; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*f*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 59.

(*g*) *R.* v. *Isaacs* (1862), Le. & Ca. 220.

(*h*) *R.* v. *Brown* (1899), 63 J. P. 790, DARLING, J.

(*i*) *R.* v. *Hollis* (1873), 12 Cox, C. C. 463, 467.

(*a*) *R.* v. *Hillman* (1863), Le. & Ca. 343.

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than five nor less than three years, or imprisonment with or without hard labour for not more than two years (*b*).

SUB-SECT. 7.—*Concealment of Birth.*

Concealment of birth.

1207. Where a woman has been delivered of a child, it is by statute a misdemeanour (*c*) for any person by any secret disposition of the dead body of the child to endeavour to conceal the birth thereof, and it is immaterial whether the child died before, at, or after its birth.

The maximum punishment for this offence is imprisonment for two years with or without hard labour (*d*).

In order to constitute this offence a woman must have been delivered of something which may properly be called a child, and not the unformed subject of a premature miscarriage (*e*). The child must be so far developed that in the ordinary course of events it would have had a fair chance of life when born (*f*).

There must be a concealment of the fact of birth, carried out by a secret disposition of the body (*g*), and this implies some act of concealment (*h*). Proof that a woman still had the body of her child in her possession, though about to dispose of it (*i*), or that she allowed others to take away the body, unless it was at her request or with her privity (*k*), or that she merely denied that she had given birth to a child (*l*), is not sufficient to support a conviction for concealment.

There is a concealment when the child is placed where it is not likely to be found; and the most complete exposure of the body in

(*b*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 59; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions.

(*c*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 60.

(*d*) *Ibid.* The defendant may be fined and ordered to find sureties for good behaviour (*ibid.*, s. 71). This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*e*) *R.* v. *Hewitt* (1866), 4 F. & F. 1101.

(*f*) It has been said that, although no specific limit can be assigned to the period when the chance of life begins, it may perhaps be safely assumed that, in the case of a child which has been less than seven months in the womb, the great probability is that it would not be born alive (*R.* v. *Berriman* (1854), 6 Cox, C. C. 388; but see *R.* v. *Colmer* (1864), 9 Cox, C. C. 506, where MARTIN, B., held that a fœtus not bigger than a man's finger, but having the shape of a child, might be a child within the meaning of the statute). In this case the woman had been confined in the fourth or fifth month after pregnancy, and MARTIN, B., expressed the opinion (at p. 507) that as soon as a fœtus which had the outward appearance of a child was born, the offence of concealment of birth could be committed; and see Stephen, Digest of Criminal Law, art. 256. It is submitted that the question of whether that which was concealed was "the dead body of a child" is in each case a question of fact for the jury.

(*g*) *R.* v. *Rosenberg* (1906), 70 J. P. 264, where the child's body was on the bed on which defendant lay, it being covered with a petticoat, an acquittal being directed. Compare *R.* v. *Perry* (1855), Dears. C. C. 471, where the defendant put the body under a bolster on which she put her head, the conviction being upheld.

(*h*) *R.* v. *Derham* (1843), 1 Cox, C. C. 56, where it was held that the fact that the defendant had left the body in a privy where she said she had been confined was no evidence of concealment.

(*i*) *R.* v. *Snell* (1837), 2 Mood. & R. 44.

(*k*) *R.* v. *Bate* (1871), 11 Cox, C. C. 686; *R.* v. *Douglas* (1836), 7 C. & P. 644; *R.* v. *Bird* (1849), 2 Car. & Kir. 817; *R.* v. *Skelton* (1850), 3 Car. & Kir. 119.

(*l*) *R.* v. *Turner* (1839), 8 C. & P. 755.

a secluded place where it would not be likely to be found may be a concealment (*m*). But leaving it in a street, though it may amount to a public nuisance, is not a concealment of birth (*n*).

The secret disposition need not be in a place where it is intended finally to leave the body; a temporary place of concealment is sufficient (*o*).

The dead body must be found and identified as that of the child the attempted concealment of whose birth is alleged (*p*).

A person does not commit the offence of endeavouring to conceal the birth of a child, if such person puts it while it is still alive in a place of concealment, even though it may subsequently die (*q*); but if such person later on visits the place, and, finding the child dead, replaces the clothes or other things with which it was concealed, she commits this offence (*r*).

The offence does not consist in the concealment of the birth of a child from any particular individual, but in such a concealment as would keep the world at large in ignorance of the birth (*s*).

Indictment.

1208. An indictment for concealment of birth must specify the particular act of concealment charged (*t*), and must allege that the child the concealment of whose birth is charged was dead at the time of the concealment (*a*), but need not specify whether the child died at or after birth (*b*).

It is a question of law for the judge whether there is evidence that the place where the body was put was such that the body might have been disposed of there so as to conceal it. It is for the jury to say whether the body had in fact been so disposed of by the defendant, and with intent to conceal the birth (*c*).

Verdict of concealment on trial for murder.

1209. If any person tried for the murder of a child is acquitted, the same jury which tried the prisoner may find, if it shall so appear in evidence, that the child had recently been born, and that the prisoner did, by some secret disposition of its dead body, endeavour to conceal its birth; the prisoner may then be sentenced, as if he or she had been convicted upon an indictment for concealing the birth (*d*).

(*m*) *R.* v. *Brown* (1870), L. R. 1 C. C. R. 244; see also *R.* v. *Sleep* (1864), 9 Cox, C. C. 559; *R.* v. *Cook* (1870), 11 Cox, C. C. 542; *R.* v. *Rosenberg* (1906), 70 J. P. 264; *R.* v. *George* (1868), 11 Cox, C. C. 41; *R.* v. *Waterage* (1846), 1 Cox, C. C. 338.

(*n*) *R.* v. *Clark* (1883), 15 Cox, C. C. 171.

(*o*) *R.* v. *Perry* (1855), Dears. C. C. 471.

(*p*) *R.* v. *Williams* (1871), 11 Cox, C. C. 684, MONTAGUE SMITH, J.

(*q*) *R.* v. *May* (1867), 10 Cox, C. C. 448, C. C. R.; but, according to the circumstances, the woman would be guilty of murder or manslaughter, or of cruelty to the child.

(*r*) *R.* v. *Hughes* (1850), 4 Cox, C. C. 449, Lord CAMPBELL, C.J.

(*s*) *R.* v. *Morris* (1848), 2 Cox, C. C. 489, COLTMAN, J.; *R.* v. *Higley* (1830), 4 C. & P. 366.

(*t*) *R.* v. *Hounsell* (1840), 2 Mood. & R. 292.

(*a*) *R.* v. *Davis* (1829), 3 Russell on Crimes, 167.

(*b*) *R.* v. *Coxhead* (1845), 1 Car. & Kir. 623; *R.* v. *Turner* (1839), 8 C. & P. 755.

(*c*) *R.* v. *Clarke* (1866), 4 F. & F. 1040, MARTIN, B.

(*d*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 60. This applies although the prisoner has only been tried on a coroner's inquisition, and not upon indictment (*R.* v. *Maynard* (1812), Russ. & Ry. 240, where the grand jury had ignored the bill of indictment).

SECT. 1. Acts involving bodily Injury.

SUB-SECT. 8—*Wounding etc. with intent to Maim etc.*

Wounding with intent to maim.

1210. Everyone is by statute (*e*) guilty of felony who by any means whatever unlawfully and maliciously wounds or causes grievous bodily harm to any person, or shoots or attempts to discharge loaded arms at any person, with intent in any of these cases to maim, disfigure or disable, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*f*).

What constitutes wounding.

1211. In order to constitute a wounding there must be an injury to the person by which the skin is broken (*g*); the continuity of the whole skin must be severed, not merely that of the cuticle or upper skin (*h*). The skin severed need not, however, be external (*i*); but it is not sufficient to prove merely that a flow of blood was caused (*k*), unless there is evidence to show where the blood originally came from (*l*).

It is not necessary that any instrument should have been used, as injury caused for instance by a kick may be a wounding (*m*).

Grievous bodily harm.

An injury may amount to grievous bodily harm without being either permanent or dangerous, if it is such as seriously to interfere with comfort or health (*n*), but some grievous injury must have been caused to the body itself, either with a weapon or without a weapon, as by a blow with the fist or by pushing a person down (*o*).

By loaded arms is meant any gun, pistol, or other arms loaded in the barrel with some explosive and ball, shot, or other destructive material, although the attempt to discharge such gun etc. may fail from want of proper priming or any other cause (*p*). The trigger need not actually be pulled in order to constitute an attempt to discharge (*q*).

Malice.

If the act charged is unlawful and done wilfully and intentionally, and without any circumstances to justify it and take away its *primâ facie* character of unlawfulness, it is malicious (*r*). Malice against the individual actually injured is not essential; general malice, *i.e.*, an intention to do an unlawful act, is sufficient (*s*).

(*e*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 18.

(*f*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*g*) *Moriarty* v. *Brooks* (1834), 6 C. & P. 684; *R.* v. *Beckett* (1836), 1 Mood. & R. 526.

(*h*) *R.* v. *M'Loughlin* (1838), 8 C. & P. 635.

(*i*) *R.* v. *Smith* (1837), 8 C. & P. 173.

(*k*) *R.* v. *Jones* (1848), 3 Cox, C. C. 441.

(*l*) *R.* v. *Waltham* (1849), 3 Cox, C. C. 442.

(*m*) *R.* v. *Duffill* (1843), 1 Cox, C. C. 49.

(*n*) *R.* v. *Ashman* (1858), 1 F. & F. 88, WILLES, J.

(*o*) *R.* v. *Clarence* (1888), 22 Q. B. D. 23, 41, C. C. R., STEPHEN, J.; decided on similar words in Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 20.

(*p*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 19.

(*q*) *R.* v. *Duckworth*, [1892] 2 Q. B. 83, C. C. R. (overruling *R.* v. *St. George* (1840), 9 C. & P. 483); *R.* v. *Linneker*, [1906] 2 K. B. 99, C. C. R.

(*r*) *R.* v. *Clarence*, *supra*, at p. 36.

(*s*) *R.* v. *Hunt* (1825), 1 Mood. C. C. 93.

On an indictment for wounding with intent the actual intent must be proved (*t*). In considering what will amount to evidence of an intent to do grievous bodily harm regard must be had to the weapon, if any, used, and the conditions under which it was used. The mere striking of the blow with a fist, even though grievous bodily harm be done, is not of itself sufficient evidence to show an intent to do grievous bodily harm (*a*).

Intent must be proved.

Where the distance at which a gun is fired is so great that serious injury does not and was not likely to result, the shooting, though the gun be aimed at the prosecutor, will not of itself be evidence of a shooting with intent to maim or to do grievous bodily harm (*b*).

The intent need not be an intent to do grievous bodily harm to the person actually injured, the offence being complete if there be an intent to maim, disfigure etc. any person (*c*).

SUB-SECT. 9—*Unlawful Wounding etc.*

1212. Everyone is by statute (*d*) guilty of a misdemeanour who unlawfully and maliciously wounds or causes grievous bodily harm to any person either with or without any weapon or instrument.

Unlawful wounding.

The punishment for this offence is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (*e*).

Though there be no intent to wound, yet a person may be guilty of unlawful wounding if he uses a weapon which is known to be calculated to wound (*f*).

Upon the trial of an indictment for any felony, except murder or manslaughter, where the indictment alleges that the defendant cut, stabbed, or wounded any person, if the jury are satisfied that the defendant is guilty of the cutting, stabbing, or wounding, but are not satisfied that he is guilty of the felony charged in the indictment, they may acquit him of the felony and convict him of unlawfully wounding, and he may then be punished for that offence (*g*).

(*t*) *R.* v. *Cox* (1859), 1 F. & F. 664.

(*a*) *R.* v. *Wheeler* (1844), 1 Cox, C. C. 106.

(*b*) *R.* v. *Abraham* (1845), 1 Cox, C. C. 208, where the prisoner was only forty or fifty yards distant, and fired at the prosecutor intentionally, and the jury were directed to acquit of the felony and convict of a common assault only, a direction which upon the facts seems difficult to understand; and see *R.* v. *Ward* (1872), L. R. 1 C. C. R. 356; decided upon s. 20.

(*c*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 18; compare *R.* v. *Stopford* (1870), 11 Cox, C. C. 643; *R.* v. *Lynch* (1846), 1 Cox, C. C. 361, where the prisoner mistook the prosecutor for another person, and *R.* v. *Fretwell* (1864), Le. & Ca. 443, where the prisoner fired at a group of persons intending generally to do grievous bodily harm.

(*d*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 20. As to what constitutes wounding and grievous bodily harm, see p. 600, *ante*.

(*e*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions.

(*f*) *R.* v. *Cox*, *supra*; see also *R.* v. *Ward*, *supra*, where the defendant had mischievously shot in the direction of the prosecutor with a view to frighten him, and the latter was seriously injured, and the court upheld a conviction under this section.

(*g*) Prevention of Offences Act, 1851 (14 & 15 Vict. c. 19), s. 5. This section appears to apply only to the felonies of wounding with intent to murder under s. 11 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100),

SECT. 1. Acts involving bodily Injury.

Causing panic.

1213. Where a man unlawfully and maliciously does an act calculated to cause a panic in a public assembly (*e.g.*, places a bar across the door in such a way as to cause a crush in which persons are injured), he may be convicted of the offence of causing grievous bodily harm (*h*).

Where one person produces in the mind of another such a sense of immediate danger as causes the other to endeavour to escape, the person responsible for the creation of that state of mind is also responsible for any injuries which may result to the person who endeavours to escape (*i*).

As in the case of felonious wounding (*j*), it is immaterial whether the person actually struck is the person whom the prisoner intended to strike (*k*).

SUB-SECT. 10—*Attempt to Choke etc. with intent to commit an Indictable Offence.*

Attempt to choke etc.

1214. Everyone is by statute (*l*) guilty of a felony who by any means whatever attempts to choke, suffocate or strangle, or by means calculated to produce that effect attempts to render any person unconscious or incapable of resistance, with intent to enable the assailant himself or another person to commit, or with intent to assist in committing, any indictable offence.

The punishment for this offence is penal servitude for life or for not less than three years and imprisonment with or without hard labour for not more than two years; and the court may order the offender, if a male, to be whipped (*m*).

SUB-SECT. 11—*Administering Drug with intent to commit an Indictable Offence.*

Administering drugs.

1215. Everyone is by statute (*n*) guilty of a felony who administers to or causes to be taken by any person any chloroform, laudanum, or other stupefying or overpowering drug or thing, or attempts to do so with intent to enable himself or any other person to commit, or with intent to assist in committing, any indictable offence.

The punishment for this offence is penal servitude for life or for

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wounding with intent to maim, disfigure, or disable, or to do grievous bodily harm, or to resist lawful apprehension under s. 18 of that statute, and wounding an officer employed in the prevention of smuggling under the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 193. It does not apply to any case where the indictment does not allege a felonious cutting, stabbing, or wounding, and a prisoner indicted under s. 18 for a felonious shooting, and for doing grievous bodily harm with intent to do grievous bodily harm, cannot, on that indictment, be convicted of unlawful wounding (*R.* v. *Miller* (1879), 14 Cox, C. C. 356).

(*h*) *R.* v. *Martin* (1881), 8 Q. B. D. 54, C. C. R.

(*i*) *R.* v. *Halliday* (1889), 61 L. T. 701, C. C. R.; *R.* v. *Ward* (1872), L. R. 1 C. C. R. 356; and see p. 572, *ante*.

(*j*) See p. 601, *ante*.

(*k*) *R.* v. *Latimer* (1886), 17 Q. B. D. 359, C. C. R.

(*l*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 21.

(*m*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1); Garrotters Act, 1863 (26 & 27 Vict. c. 44). As to whipping see p. 664, *post*.

(*n*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 22. And see p. 614, *post*, as to administering stupefying drugs etc. to a woman with a view to have carnal connection with her. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

not less than three years, or imprisonment with or without hard labour for not more than two years (*o*).

SUB-SECT. 12—*Administering Poison etc. so as to Endanger Life.*

Administering poison.

1216. Everyone is by statute (*p*) guilty of a felony who unlawfully and maliciously administers or causes to be administered to or taken by any person any poison or other destructive or noxious thing so as thereby either to endanger the life of such person or to inflict upon him grievous bodily harm.

The punishment for this offence is penal servitude for not more than ten nor less than three years, or imprisonment with or without hard labour for not more than two years (*q*).

If the poison or noxious thing be administered with intent to injure, aggrieve, or annoy any person, the offence is a misdemeanour (*r*), and the punishment is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (*s*).

But if, in fact, grievous bodily harm is caused by the noxious thing, the prisoner is guilty of the felony above referred to, although the intent was merely to injure or annoy (*t*).

On an indictment charging the felony of administering poison so as to cause grievous bodily harm the jury may convict of the misdemeanour of administering it with intent to injure or annoy (*a*).

The drug or thing administered must in this case be noxious in itself, and not merely so when taken in excess, or the prisoner cannot be convicted, although there may have been an intent to injure or annoy (*b*). It is sufficient that the actual amount administered is enough to cause injury, even though when taken in smaller quantities the particular thing given would be harmless (*c*). And probably if the thing administered were a recognised poison, the quantity used would be immaterial (*d*). The administering does not necessarily consist in the actual giving of the poison to the prosecutor by the accused. It is sufficient if poison be placed by the accused where it will be taken (*e*); or if it be handed to a third person in order that it may be given to another, although it may ultimately reach and be taken by someone for whom it was not intended (*f*).

The administration of cantharides to a woman with the intention

(*o*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 22; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*p*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 23.

(*q*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions.

(*r*) *Ibid.*, s. 24.

(*s*) *Ibid.*; The offender may be fined (*ibid.*, s. 71); Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*t*) *Tulley* v. *Corrie* (1867), 10 Cox, C. C. 584, 640.

(*a*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 25.

(*b*) *R.* v. *Hennah* (1877), 13 Cox, C. C. 547.

(*c*) *R.* v. *Cramp* (1880), 5 Q. B. D. 307, C. C. R.; decided under s. 58.

(*d*) *Ibid.*

(*e*) *R.* v. *Harley* (1830), 4 C. & P. 369.

(*f*) *R.* v. *Michael* (1840), 9 C. & P. 356; *R.* v. *Lewis* (1833), 6 C. & P. 161; and see note (*g*) on p. 593, *ante*.

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of exciting her sexual passion is an administration of a noxious thing with intent to injure or annoy (*g*).

SUB-SECT. 13—*Injury by Explosion or Corrosives.*

Causing explosion.

1217. Everyone is by statute (*h*) guilty of a felony who unlawfully and maliciously burns, maims, disfigures or disables, or does grievous bodily harm to any person by the explosion of any explosive substance.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years. If the offender is a male under sixteen years of age, in addition to any other punishment he may be whipped (*i*).

1218. Everyone is by statute (*k*) guilty of a felony who unlawfully and maliciously (1) causes any explosive substance to explode; or (2) sends to or causes to be taken or received by any person any explosive substance or other dangerous or noxious thing; or (3) places anywhere or throws at or upon or otherwise applies to any person any corrosive fluid, or any destructive or explosive substance, with intent, in any such case, to burn, maim, disfigure or disable any person, or to do grievous bodily harm to any person, whether any bodily injury be effected or not.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years. If the offender is a male under sixteen years of age, in addition to any other punishment he may be whipped (*l*).

1219. Everyone is by statute (*m*) guilty of a felony who unlawfully and maliciously places or throws in, into, against or near any building, ship or vessel any explosive substance with intent to do any bodily injury to any person, whether or not an explosion takes place or any bodily injury is effected.

The punishment for this offence is penal servitude for fourteen or for not less than three years, or imprisonment with or without hard labour for not more than two years. If the offender is a male under sixteen years of age, in addition to any other punishment he may be whipped (*n*).

(*g*) *R.* v. *Wilkins* (1861), Le. & Ca. 89. As to the administration of stupefying drugs see p. 602, *ante*, and pp. 612, 614, *post*.

(*h*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 28.

(*i*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*k*) *Ibid.*, s. 29. Boiling water may be a destructive substance within the meaning of the section (*R.* v. *Crawford* (1845), 2 Car. & Kir. 129). As to explosives, see also p. 775, *post*.

(*l*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 29; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*m*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 30.

(*n*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not, it seems, excluded from the jurisdiction of quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1). As to damaging buildings by explosion with intent to murder, see p. 594, *ante*.

1220. Everyone is by statute (*p*) guilty of a misdemeanour who knowingly has in his possession, or makes any gunpowder, explosive substance, or any dangerous or noxious thing, or any machine, instrument, or thing, with intent by means thereof to commit any felony mentioned in the Offences against the Person Act, 1861 (*q*).

The punishment for this offence is imprisonment for not more than two years with or without hard labour and, in the case of a male under sixteen years of age, a whipping (*r*).

SUB-SECT. 14.—*Setting Man-traps etc.*

Setting man-traps.

1221. Everyone is by statute (*a*) guilty of a misdemeanour who sets or places, or causes to be set or placed, any man-trap, spring-gun, or other engine calculated to destroy human life or inflict grievous bodily harm, with the intent that it shall, or whereby it may, destroy or inflict grievous bodily harm on a trespasser or other person coming in contact with it.

The punishment for this offence is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (*b*).

A person who knowingly and wilfully permits any such engine, which may have been set or placed in any place in his possession or occupation by some other person, to continue so set or placed is deemed to have set or placed it with the above-mentioned intent (*c*).

It is not forbidden to set such traps as are usually set with the intent of destroying vermin, or to set, between sunset and sunrise, a mantrap, spring gun, or other engine in a dwelling-house for its protection (*d*). The statute creating the misdemeanour only applies to instruments set with the intention to do grievous bodily harm, or whereby grievous bodily harm is actually caused (*e*).

SUB-SECT. 15.—*Furious Driving.*

Furious driving.

1222. Everyone is guilty of a misdemeanour (*f*) who, having the charge of any carriage or vehicle, by wanton or furious driving or

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(*p*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 64.

(*q*) 24 & 25 Vict. c. 100.

(*r*) *Ibid.*, s. 64. This offence, it seems, is triable at quarter sessions. As to offences under the Explosive Substances Act, 1883 (46 Vict. c. 3), see p. 775, *post*, and title EXPLOSIVES.

(*a*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 31.

(*b*) *Ibid.* The defendant may also be fined and ordered to find sureties (*ibid.*, s. 71; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1). This offence is triable at quarter sessions.

(*c*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 31.

(*d*) *Ibid.*

(*e*) *Jordin* v. *Crump* (1841), 8 M. & W. 782, 787; a dogspear is therefore not within the section.

(*f*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 35. A bicycle is a vehicle within the meaning of this section (*R.* v. *Parker* (1895), 59 J. P. 793). Furious driving is punishable summarily by a fine of £5 (Highways Act, 1835 (5 & 6 Will. 4, c. 50), s. 78); see also as to riding or driving to the common danger and the arrest of the offender, Public Health Acts Amendment

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racing, or other wilful misconduct, or by wilful neglect, does or causes to be done to any person any bodily harm.

The punishment for this offence is imprisonment with or without hard labour for two years (*g*).

SUB-SECT. 16.—*Assault.*

Assault.

1223. An assault is an offer or attempt to apply force or violence to the person of another in an angry or hostile manner; and if force be actually applied, either illegally or without the consent of the person assaulted, and in an angry, rude, revengeful, or violent manner, the assault becomes a battery, however slight the force may be (*h*). Every battery includes an assault.

Mere words can never amount to an assault (*i*). There must be some act indicating an intention of assaulting, or which an ordinary person might reasonably construe as indicating such an intention, or some act amounting to an attempt.

If no actual violence is used, there must, to constitute an assault, be some threatening act sufficient to raise in the mind of the person threatened a fear of immediate violence; therefore, if an offer is made to strike a person with the fist, at such a distance as to make it impossible for a blow to reach, there is no assault; so, too, where a pistol is presented at a range to which the ball cannot by any possibility carry (*k*).

False imprisonment.

1224. It is a common law misdemeanour punishable by fine and imprisonment to imprison any person without lawful cause (*l*).

Act, 1907 (7 Edw. 7, c. 53), s. 79. A person driving a motor car recklessly or negligently, or at a speed or in a manner dangerous to the public, is liable on summary conviction to a penalty of £20, and on a second conviction to a fine of £50 or imprisonment for three months. There are also penalties for driving at a greater speed than twenty miles per hour (Motor Car Act, 1903 (3 Edw. 7, c. 36), ss. 1, 9, 11).

(*g*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 35. The defendant may also be fined and ordered to find sureties (*ibid.*, s. 71). This offence is triable at quarter sessions.

(*h*) 1 Hawk. P. C., c. 62, s. 5.

(*i*) 1 Hawk. P. C., c. 15, s. 1.

(*k*) See *R.* v. *St. George* (1840), 9 C. & P. 483, 490; *R.* v. *March* (1844), 1 Car. & Kir. 496; compare *R.* v. *Renshaw* (1847), 2 Cox, C. C. 285; *R.* v. *Cotesworth* (1705) 6 Mod. Rep. 172. Putting a noxious thing into liquor in order that a person may drink it is not an assault or any other common law misdemeanour (*R.* v. *Hanson* (1849), 2 Car. & Kir. 912; *R.* v. *Walkden* (1845), 1 Cox, C. C. 282, not following *R.* v. *Button* (1838), 8 C. & P. 660). But see Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 24 (p. 603, *ante*), and Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 3 (3) (p. 614, *post*). Touching a person so as merely to call his attention, if there is no hostile intention, is not a criminal assault (*Coward* v. *Baddeley* (1859), 4 H. & N. 478). If two or more meet in a narrow passage, and without any violence or design of harm one touches the other gently, it is no battery; but if either uses violence to the other to force his way in a rude inordinate manner, it will be a battery (*Cole* v. *Turner* (1704), 6 Mod. Rep. 149). The intention must be considered; so to clap a man on the back in joke or friendship is not an assault (*Williams* v. *Jones* (1736), Lee *temp.* Hard. 298, 301). To cut or injure clothes which a man is at the time wearing is an assault upon him, though no injury may be done or intended to his person (*R.* v. *Day* (1845), 1 Cox, C. C. 207).

(*l*) Com. Dig. Imprisonment, L, 1; 1 East, P. C. 248; *R.* v. *Lesley* (1860), Bell, C. C. 220; see *Hunter* v. *Johnson* (1884), 13 Q. B. D. 225.

Every restraint of the liberty of one person under the custody of another, either in a gaol, house, or in the street, is in law an imprisonment (*m*).

Consent.

1225. Generally speaking, in order to constitute an assault it is necessary that the act should be done against the will of the person assaulted, and, in consequence, consent is usually a good defence to a charge of assault (*n*). If, however, the act amounts to a breach of the peace or has a direct tendency to cause a breach of the peace, and is therefore injurious to the public, or if the act be a dangerous one, consent will afford no defence (*o*). For these reasons all persons taking part in or aiding and abetting a prize fight are guilty of assault (*p*).

The consent must be that of a rational person who knows the nature of the act consented to (*q*); and fraud as to the nature of the act done, or as to the identity of the person doing it, vitiates consent (*r*). Therefore if a medical man strips a female patient naked on the pretence that he is thereby diagnosing her case (*s*), or has connection with a female child of fourteen on pretence that he is treating her medically (*t*), he is guilty of an assault.

Without the consent of a prisoner, a judge or magistrate has no power to order an examination of his person, and if in pursuance of such an order an examination is made, the person who made the order and the person who makes the examination are guilty of an assault. But if the prisoner consents, even under a misapprehension as to the power to make such an order, such consent is an answer to the charge of assault (*u*), and a

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(*m*) 1 Buller, Nisi Prius, 22 a. A wrongful imprisonment amounts to an assault (1 Hawk. P. C., c. 60, s. 7), even though no violence or threat of violence is actually used (see *R.* v. *Linsberg* (1905), 69 J. P. 107), and is usually punished as such, there being few (if any) reported cases of indictments for false imprisonment simply, as an assault is always charged in the same indictment and usually in one count with the false imprisonment, as in *R.* v. *Lesley* (1860), Bell, C. C. 220, though a count for false imprisonment alone without alleging an assault is good. For forms of indictment see 3 Chitty, Criminal Law, 834. An imprisonment may include a battery, but does not necessarily do so (*Emmett* v. *Lyne* (1805), 1 Bos. & P. (N. R.) 255). See, generally, as to false imprisonment, title TRESPASS.

(*n*) *R.* v. *Meredith* (1838), 8 C. & P. 589.

(*o*) *R.* v. *Coney* (1882), 8 Q. B. D. 534, 537, 547, C. C. R.

(*p*) *Ibid.*; *R.* v. *Perkins* (1831), 4 C. & P. 537; *R.* v. *Brown* (1841), Car. & M. 314. The mere presence at a prize fight of a spectator who takes no part in the proceedings, either by word or act, does not, as a matter of law, necessarily make him an aider or abettor, but his presence unexplained may afford some evidence that he was present aiding and abetting (*R.* v. *Coney*, *supra*, at pp. 552, 558).

(*q*) *R.* v. *Lock* (1872), L. R. 2 C. C. R. 10.

(*r*) *R.* v. *Clarence* (1888), 22 Q. B. D. 23, 43, C. C. R., where the majority of the judges held that a wife's consent to her husband having intercourse with her was not vitiated by the fact that he fraudulently concealed from her the fact that he was suffering from venereal disease. As to a woman permitting a man to have intercourse with her under the belief that he is her husband, whom the man is personating, see Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 4, p. 612, *post*.

(*s*) *R.* v. *Rosinski* (1824), 1 Mood. C. C. 198.

(*t*) *R.* v. *Case* (1850), 1 Den. 580.

(*u*) *R.* v. *Boulton* (1871), 12 Cox, C. C. 87, 91. The right of a constable to search a prisoner upon his arrest appears to be impliedly recognised by the

SECT. 1. Acts involving bodily Injury.

submission even under protest is, unless induced by force, a sufficient consent.

In cases of indecent assault the consent of a child under the age of thirteen affords no defence (*a*).

Accident.

1226. It is a sufficient defence to a charge of assault that the act alleged was a mere accident (*b*); or that it was done while the parties were engaged in a game or sport which was lawful and not seriously dangerous to life or limb (*c*).

Correction.

1227. An act is not an assault, if it is done in the course of lawful correction, as that of a child by its parent, or that of an apprentice or scholar by his master, or in the punishment of a convicted criminal according to law by the proper officer (*d*). In the two former cases the correction must be reasonable and moderate and administered with a proper instrument, and, in the case of a female, in a decent manner (*e*).

Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 44, but, except in the metropolis (as to which see Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 66; Canal (Offences) Act, 1840 (3 & 4 Vict. c. 50), s. 11), there is no express statutory authority given to make such a search upon an arrest for larceny or similar offences. As to the extent of the right of search at common law, see *Bessell* v. *Wilson* (1853), 20 L. T. (o. s.) 233; *R.* v. *Bass* (1849), 2 Car. & Kir. 822; *Dillon* v. *O'Brien* (1887), 16 Cox, C. C. 245; *R.* v. *Boulton*, *supra*, at p. 95, and p. 309, *ante*; *Latter* v. *Braddell* (1881), 50 L. J. (Q. B.) 166, 448, C. A.

(*a*) Criminal Law Amendment Act, 1880 (43 & 44 Vict. c. 45), s. 2.

(*b*) *Gibbons* v. *Pepper* (1695), 2 Salk. 637; *Stanley* v. *Powell*, [1891] 1 Q. B. 86.

(*c*) *R.* v. *Coney* (1882), 8 Q. B. D. 534, 539, 549, C. C. R.

(*d*) *R.* v. *Hopley* (1860), 2 F. & F. 202, at p. 206, COCKBURN, C.J.; *R.* v. *Griffin* (1869), 11 Cox, C. C. 402; 1 Hawk. P. C., c. 28, s. 23, 8th ed., p. 483; c. 10, s. 4, p. 80. See also p. 577, *ante*.

(*e*) *R.* v. *Miles* (1842), 6 Jur. 243; *R.* v. *Hopley* (1860), 2 F. & F. 202, 206; *Cleary* v. *Booth*, [1893] 1 Q. B. 465. As to the right of a parent or of a person *in loco parentis* to chastise his child, while under age, in a reasonable manner, see 1 Bl. Com. 452; 1 Hale, P. C. 473, 474; *R.* v. *Conner* (1836), 7 C. & P. 438. The right of the schoolmaster to chastise a pupil is regarded as a delegation of the parental right (*Cleary* v. *Booth*, *supra*), and extends to a responsible assistant teacher (*Mansell* v. *Griffin* (1908), 99 L. T. 132, C. A.). The right of a parent, teacher, or other person having the lawful control or charge of a child or young person to administer punishment to such child or young person is recognised and not affected by the Children Act, 1908 (8 Edw. 7, c. 67), s. 37. Notwithstanding early *dicta* to the contrary, a husband is not entitled to inflict personal chastisement upon his wife, or to imprison her, though probably he may restrain her, if she is about to commit an act which would dishonour him (*R.* v. *Lister* (1721), 1 Stra. 478; *R.* v. *Jackson*, [1891] 1 Q. B. 671, 679, 683, C. A.). It was formerly held that a master might moderately chastise his servant (*Bleke* v. *Grove* (1664), 1 Keb. 661; *R.* v. *Keate* (1698), Comb. 406, 408; Bac. Abr., tit. Master and Servant, N; 1 Hawk. P. C., c. 29, s. 5; *ibid.*, c. 60, s. 23; Fost. 262). In 1785 Sir WM. JONES, in charging a grand jury at Calcutta laid down that a master had this right of chastisement (Sir Wm. Jones's Works, Vol. III., pp. 8, 12, cited in Macdonell, Law of Master and Servant, 2nd ed., p. 30, n.). Since that date there has been no judicial opinion expressed on the subject. Text-book writers have assumed that the right no longer exists in law, but it might be found difficult, if the question arose, to disregard the above-mentioned authorities. In the case of an apprentice there is no such doubt, as a master is clearly entitled to chastise his apprentice for misconduct, reasonably and in moderation (*Penn* v. *Ward* (1835), 2 Cr. M. & R. 338; *Walter* v. *Everard*, [1891] 2 Q. B. 369, 376, C. A.), though this probably is a mere personal right which he cannot depute to

Self defence.

1228. If the act alleged be done in self defence, it is justified provided that no more force is used than is necessary for mere defence. If an assault is threatened, as by raising a hand against another within a distance capable of the latter being struck, the latter may strike in his own defence to prevent it (*f*), and, although unnecessary violence must not be used, if a person strikes at another, the person struck at is justified in using such a degree of force as will prevent a repetition of the assault (*g*).

Defence of others.

1229. A husband may justify a battery in defence of his wife, a master in defence of his servant, a child in defence of his parent, and *vice versâ* in each case (*h*). If the violence used is excessive, or if it is used after the danger is passed or by way of revenge, the assault cannot be justified (*i*).

Use of deadly weapon.

1230. A man is not entitled to use a deadly weapon to repel a common assault; to justify the use of such a weapon he must be in fear of serious bodily danger or robbery, or some similar crime of violence (*k*), and must first have retreated as far as possible and must not use more violence than is appropriate to the occasion (*l*).

Defence of property.

1231. A person is justified in using reasonable force in defence of his possessions, as for instance in removing a trespasser or preventing his entry; or to restrain another from taking or destroying his goods. But no more violence must be used than is necessary for the purpose (*m*).

Lawful arrest.

1232. It is an answer to a charge of assault that the defendant was lawfully arresting the prosecutor, either on criminal or civil process, and used no more force than was necessary (*n*).

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another (see *Combes's Case* (1613), 9 Co. Rep. 75 a, 76 a). The master of a ship has power to inflict moderate and reasonable punishment upon one of his crew for riotous and mutinous misconduct (*Lamb* v. *Burnett* (1831), 1 Cr. & J. 291; *Watson* v. *Christie* (1800), 2 B. & P. 224); but the right of flogging a disobedient or mutinous seaman has perhaps now fallen into desuetude.

(*f*) A person so threatened is not limited to warding off a blow, but is justified in striking if reasonably necessary for self defence (*R.* v. *Carman Deana* (1909), 73 J. P. 255, C. C. A.).

(*g*) *Anon.* (1836), 2 Lew. C. C. 48, PARKE, B.; and compare 1 Sid. 246, and p. 586, *ante*.

(*h*) 1 Hawk. P. C., c. 60, ss. 23, 24; 3 Salk. 46.

(*i*) *R.* v. *Driscoll* (1841), Car. & M. 214.

(*k*) *Cockcroft* v. *Smith* (1705), 2 Salk. 642; *R.* v. *Hewlett* (1858), 1 F. & F. 91.

(*l*) *R.* v. *Odgers* (1843), 2 Mood. & R. 479; see p. 587, *ante*.

(*m*) 1 Hawk. P. C., c. 60, s. 23; *Weaver* v. *Bush* (1798), 8 Term Rep. 78; *Scott* v. *Brown* (1884), 51 L. T. 746; *Harrison* v. *Rutland* (*Duke*), [1893] 1 Q. B. 142, C. A.; compare *Dean* v. *Hogg* (1834), 10 Bing. 345; *Holmes* v. *Bagge* (1853), 1 E. & B. 782, where the defendants had the full enjoyment of the premises, but not the full and exclusive right of possession, and on this ground they were unable to justify the forcible removal of the plaintiffs. See also title TRESPASS; and as to forcible entry and detainer, p. 474, *ante*.

(*n*) 2 Roll. Abr. 546, A; and perhaps even under certain circumstances, if the object was merely to serve civil process (*Harrison* v. *Hodgson* (1830), 10 B. & C. 445).

SECT. 1. Acts involving bodily Injury.

Punishment for different kinds of assault.

1233. A common assault is a misdemeanour punishable with imprisonment with or without hard labour for not more than one year (*o*).

An assault with intent to commit a felony is a misdemeanour for which two years' imprisonment with or without hard labour may be awarded (*p*).

An assault occasioning actual bodily harm is a misdemeanour, the punishment for which is penal servitude for not more than five nor for not less than three years, or imprisonment with or without hard labour for not more than two years (*a*).

Verdict of common assault on indictment for a more serious assault.

1234. Upon the general principle that whenever a defendant is indicted for a misdemeanour which includes in it an offence of minor extent and gravity he may be convicted of the minor offence so included, a person may be found guilty of a common assault upon an indictment charging him with inflicting grievous bodily harm, or with unlawful wounding, or with assaulting and causing actual bodily harm (*b*), or upon any indictment charging a misdemeanour which includes the lesser misdemeanour of an assault (*c*). But there cannot be a conviction for a common assault upon an indictment for feloniously assaulting with intent to rob (*d*).

(*o*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 47. Instead of or in addition to imprisonment the offender may be fined and ordered to enter into his own recognisances, with or without sureties, to keep the peace and be of good behaviour (*ibid.*, s. 71). This offence is triable at quarter sessions. In all cases of assault, except (1) where the assault was committed in the course of an attempt to commit felony; (2) where the justices are of opinion that the assault is from any other circumstances a fit subject for prosecution by indictment; and (3) where any question arises as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice, a court of summary jurisdiction may upon complaint of the party aggrieved hear the charge, and upon conviction sentence the offender to imprisonment for two months, or a fine of £5, or in the case of an aggravated assault upon a woman or child, to imprisonment for six months, or a fine of £20 (Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 42, 43, 46; see title MAGISTRATES). If the complaint is dismissed they are required to deliver to the defendant a certificate to that effect, and the obtaining of such a certificate or, if he has been convicted, the payment of the fine or the suffering of the imprisonment awarded, releases him from all further or other proceedings for the same cause (*ibid.*, ss. 44, 45). Although the charge may have only been of a simple assault, the certificate will be a bar to an indictment for an aggravated assault arising out of the same transaction (*R.* v. *Elrington* (or *Ebrington*) (1861), 1 B. & S. 688), but not to an indictment for manslaughter, if the person assaulted subsequently dies (*R.* v. *Morris* (1867), L. R. 1 C. C. R. 90). The certificate or the suffering of the punishment should be specially pleaded (*R.* v. *Stanton* (1851), 5 Cox, C. C. 324), as was done in *R.* v. *Elrington*, *supra*.

(*p*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 38. This offence is triable at quarter sessions. The punishment is the same for an assault on a clergyman in the performance of his duty (see *ibid.*, s. 36).

(*a*) *Ibid.*, s. 47; and Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions.

(*b*) *R.* v. *Yeadon* (1861), 9 Cox, C. C. 91, C. C. R.; *R.* v. *Oliver* (1860), 8 Cox, C. C. 384, C. C. R.

(*c*) *R.* v. *Canwell* (1869), 11 Cox, C. C. 261, C. C. R.; *R.* v. *Taylor* (1869), L. R. 1 C. C. R. 194.

(*d*) *R.* v. *Woodhall* (1872), 12 Cox, C. C. 240, DENMAN, J.

SECT. 2.—*Offences against Women and Girls.*

SUB-SECT. 1.—*Rape.*

SECT. 2. Offences against Women and Girls.

Rape.

1235. Anyone is guilty of the felony of rape who has unlawful and carnal knowledge of a woman by force and against her will (*e*).

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*f*).

Husband and wife.

1236. A man cannot be guilty as a principal in the first degree of a rape upon his wife, for the wife is unable to retract the consent to cohabitation which is a part of the contract of matrimony (*g*). But a husband, who is present and assisting another person to commit a rape upon his wife, may upon an indictment for rape be convicted as a principal in the second degree (*h*), as also may a woman under similar circumstances (*i*).

Penetration.

1237. There must be evidence of penetration of the private parts of the woman by the private parts of the prisoner, but the slightest penetration is sufficient (*k*), and it is not necessary that the hymen should be ruptured (*l*). It is not necessary to prove actual emission, the carnal knowledge being deemed to be complete upon proof of penetration only (*m*). If penetration cannot be satisfactorily proved, the prisoner may be convicted of an attempt to commit a rape (*n*) or of an indecent assault (*o*).

(*e*) 1 Hawk. P. C., c. 16, s. 2 (8th ed., I., 122). As to the consent of a girl under the age of thirteen to the unlawful connection being no defence, see p. 612, *post*. As to boys under fourteen, see p. 240, *ante*. As to a woman being guilty of rape as a principal in the second degree, see p. 250, note (*r*), *ante*.

(*f*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 48; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*g*) 1 Hale, P. C., p. 629, where Sir Matthew Hale also discusses the question whether connection after a voidable marriage, brought about by compulsion and violence, amounts to rape. The proposition stated in the text, and others arising from it, were discussed at great length by the Court for Crown Cases Reserved in *R.* v. *Clarence* (1888), 22 Q. B. D. 23. Two of the judges who dissented from the decision of the majority declined to admit that the matrimonial consent of the wife to connection could not under any circumstances be retracted, and an opinion was expressed (*per* HAWKINS, J., at p. 52) that a husband might be convicted of a rape upon his wife, if he had connection with her maliciously intending to communicate disease to her. In *Popkin* v. *Popkin* (1794), 1 Hag. Ecc. 765, n. (a divorce case where cruelty was charged), it was said by Lord STOWELL, at p. 767, n., "the husband has a right to the person of his wife, but not if her health is endangered"; but whether he referred to a legal or a moral right is not clear.

(*h*) 1 Hale, P. C. 629; *R.* v. *Audley* (*Lord*) (1631), 3 State Tr. 402.

(*i*) *R.* v. *Ram* (1893), 17 Cox, C. C. 609.

(*k*) *R.* v. *Lines* (1844), 1 Car. & Kir. 393; *R.* v. *Stanton* (1844), 1 Car. & Kir. 415.

(*l*) *R.* v. *Hughes* (1841), 2 Mood. C. C. 190.

(*m*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 63; see *R.* v. *Marsden*, [1891] 2 Q. B. 149, C. C. R.

(*n*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 9. So a person charged with aiding and abetting a person in committing a rape may be convicted of aiding and abetting him in attempting to commit it (*R.* v. *Hapgood* (1870), L. R. 1 C. C. R. 221).

(*o*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 9.

SECT. 2. Offences against Women and Girls.

Consent.

1238. The connection must have been against the will of the woman, except in the case of a girl under the age of thirteen (*a*). A consent obtained by menaces of death or duress is in law no consent (*b*). If a person by giving a woman liquor makes her intoxicated to such a degree as to be insensible, and then has connection with her, he may be convicted of rape, whether he gave her the liquor to cause insensibility or only to excite her (*c*). If the woman is asleep when the connection takes place, she is incapable of consent, and although no violence is used, the prisoner may be convicted of rape, if he knew that she was asleep (*d*).

Submission owing to ignorance of, or to mistake as to the nature of, the act done or the person doing it, and induced by the fraud of the prisoner, does not constitute consent (*e*). A person who induces a married woman to permit him to have connection with her by personating her husband is guilty of rape (*f*).

If a woman of unsound mind is in such a state of idiotcy as to be incapable of expressing either consent or dissent, and the prisoner has connection with her without her consent, he is guilty of rape, but otherwise the consent of such a woman, induced by mere animal instinct, is sufficient to prevent the act from constituting a rape (*g*).

(*a*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 4; *R.* v. *Ratcliffe* (1882), 10 Q. B. D. 74, C. C. R. This also applies to an attempt to commit the offence (*R.* v. *Beale* (1865), L. R. 1 C. C. R. 10).

(*b*) 1 Hale, P. C. 631; 1 Hawk. P. C., c. 16, s. 7; *R.* v. *Jones* (1861), 4 L. T. 154.

(*c*) *R.* v. *Camplin* (1845), 1 Cox, C. C. 220, C. C. R., where the girl, who was thirteen years of age, had refused the prisoner's advances so long as she remained conscious. If anyone else had made her drunk, the prisoner might equally have been convicted. PATTESON, J., repudiated the idea that the person of a drunken woman by the roadside might be violated with impunity by every passer-by; as to which see also *R.* v. *Fletcher* (1859), Bell, C. C. 63, 71. As to procuring defilement of women by threats, or by fraud, or by the use of intoxicating drugs, see also p. 614, *post*.

(*d*) *R.* v. *Mayers* (1872), 12 Cox, C. C. 311; *R.* v. *Young* (1878), 14 Cox, C. C. 114, C. C. R.

(*e*) *R.* v. *Flattery* (1877), 2 Q. B. D. 410, C. C. R.; *R.* v. *Case* (1850), 4 Cox, C. C. 220; *R.* v. *Stanton* (1851), 1 Car. & Kir. 415; *R.* v. *Clarence* (1888), 22 Q. B. D. 23, 43, C. C. R. The fraud must be as to the nature of the act, or as to the identity of the person committing it (*R.* v. *Clarence*, *supra*, at p. 44, STEPHEN, J.).

(*f*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 4. The section only refers to the case of a married woman and the personator of her husband. It is not altogether certain whether a similar personation by another man of the paramour of a concubine would amount to rape. Before the Act it would probably have been held that it did not (*R.* v. *Barrow* (1868), L. R. 1 C. C. R. 156. The Irish Court for Crown Cases Reserved refused, however, to follow that case in *R.* v. *Dee* (1884), 15 Cox, C. C. 579, and the authority of *R.* v. *Barrow* must be considered as to some extent shaken by the observations of the judges in *R.* v. *Flattery* (1877), 2 Q. B. D. 410, C. C. R.). In the case supposed the woman would not be protected by s. 3 (2) of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69) (see p. 614, *post*), unless she was commonly supposed to be the wife of her paramour.

(*g*) The statement in the text is taken from a *dictum* of WILLES, J., in *R.* v. *Fletcher* (1859), Bell, C. C. 63, 70, which was adopted by KEATING, J., in *R.* v. *Fletcher* (1866), L. R. 1 C. C. R. 39, and approved by the Court for Crown Cases Reserved in *R.* v. *Barratt* (1873), L. R. 2 C. C. R. 81. See p. 613, *post*.

1239. A condonation or consent after the fact affords no defence (*h*), nor does the fact that the woman was the prisoner's concubine (*i*) or a common strumpet (*k*).

Character of prosecutrix.

1240. The prosecutrix may be asked in cross-examination whether she has previously had connection with the prisoner with her own consent, and if she denies it, evidence of the fact may be given on behalf of the prisoner (*l*). Evidence may also be given with a view to show her character for general indecency (*m*), or that she is a common prostitute (*n*); she may also be asked if she has had connection with particular men other than the prisoner, but if she denies that she has, evidence cannot be given to contradict her denial (*o*).

Carnal knowledge of an idiot.

1241. Any person is by statute (*p*) guilty of a misdemeanour who unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of, any female idiot or imbecile woman or girl under circumstances which do not amount to rape, but which prove that he knew at the time of the commission of the offence that she was an idiot or imbecile. The consent of the woman or girl is immaterial.

The punishment for this offence is imprisonment with or without hard labour for not more than two years (*q*).

(*h*) 1 Hale, P. C. 631. Formerly a consent subsequent barred an appeal for rape, but not an indictment at the suit of the King (Statute of Westminster the Second (1285) (13 Edw. 1, c. 34)).

(*i*) 1 Hale, P. C. 628.

(*k*) 1 Hawk. P. C., c. 16, s. 7. These facts, however, will of course have a bearing upon the question whether the prosecutrix consented. Sir Matthew Hale (1 P. C. 633) states the following circumstances by which the truth of the prosecutrix's evidence may be tested: "If the witness be of good fame, if she presently discovered (*i.e.*, complained of) the offence, made suit after the offender, showed circumstances and signs of the injury whereof many are of that nature that only women are the most proper examiners and inspectors, if the place wherein the act was done was remote from people, inhabitants or passengers, if the offender fled for it, these and the like are concurring evidences to give greater probability to her testimony, when proved by others as well as herself. But on the other side if she concealed the injury for any considerable time after she had opportunity to complain, if the place where the act was supposed to be committed were near to inhabitants or common recourse or passage of passengers, and she made no outcry when and where it is probable she might be heard by others, these and the like circumstances carry a strong presumption that her testimony is false or feigned"; see also 4 Bl. Com. 213. The fact that the woman made a speedy complaint has always been admissible; as to when the details of her complaint may be given in evidence, see pp. 388, 394, *ante*. In practice some corroboration of the woman's statement is always required, though the jury may act upon her uncorroborated evidence, if they think fit.

(*l*) *R.* v. *Martin* (1834), 6 C. & P. 562; *R.* v. *Riley* (1887), 18 Q. B. D. 481, C. C. R.

(*m*) *R.* v. *Tissington* (1843), 1 Cox, C. C. 48.

(*n*) *R.* v. *Barker* (1829), 3 C. & P. 589.

(*o*) *R.* v. *Holmes* (1871), L. R. 1 C. C. R. 334. As to evidence to show the general reputation of a witness for untruthfulness, see p. 383, *ante;* as to the cross-examination of a prisoner with regard to his character or previous offences if the defence attacks the character of the prosecutrix or alleges the good character of the prisoner, see pp. 382, 404, *ante*.

(*p*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 5 (2); it is by statute a misdemeanour punishable in the same way for any person employed in an institution for lunatics, or having the care or charge of a single patient, unlawfully to have or attempt to have carnal knowledge of a lunatic in such institution or under such charge; the consent of the lunatic is immaterial (Lunacy Act, 1890 (53 Vict. c. 5), ss. 324, 325).

(*q*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 5 (2); see

SECT. 2. Offences against Women and Girls.

Evidence of wife of prisoner.

Conviction of other offences on an indictment for rape.

1242. Upon a charge of rape or of unlawful carnal knowledge of a female idiot etc., the wife of the prisoner may be called as a witness for the prosecution without the consent of the prisoner (*r*).

1243. Upon the trial of an indictment for rape the jury may convict the prisoner (*s*) of:—By threats procuring or attempting to procure the woman to have any unlawful carnal connection (*t*); or by false pretences procuring her to have any unlawful carnal connection (*u*); or administering to her any drug, matter, or thing with intent to stupefy so as thereby to enable any person to have unlawful carnal connection with her (*a*); or unlawfully and carnally knowing or attempting to have unlawful carnal knowledge of a girl under the age of thirteen years (*b*); or unlawfully and carnally knowing or attempting to have unlawful carnal knowledge of a girl above the age of thirteen years and under the age of sixteen years (*c*); or unlawfully and carnally knowing or attempting to have unlawful carnal knowledge of an idiot or imbecile woman under circumstances which do not amount to rape (*d*); or of an indecent assault.

Upon such conviction the defendant is liable to be punished in the same manner as if he had been convicted upon an indictment for such offence.

SUB-SECT. 2.—*Offences under the Criminal Law Amendment Act*, 1885.

Procuring.

1244. Any person is by statute (*e*) guilty of a misdemeanour who (1) by threats or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connection (*f*) either within or without the King's dominions, or (2) by false pretences or false representations (*g*) procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful connection either within or without the King's dominions, or (3) administers to or causes to be taken by any woman or girl any drug, matter, or thing with intent to stupefy or overpower her so as

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also Lunacy Act, 1890 (53 Vict. c. 5), ss. 324, 325, and title LUNATICS AND PERSONS OF UNSOUND MIND. The offence is not triable at quarter sessions (Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 17).

(*r*) Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 4. It is not clear, however, that she can be compelled to give evidence against her will (Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 20); she certainly cannot be compelled to disclose any communication made to her by the prisoner during their marriage (Criminal Evidence Act, 1898, *supra*, s. 1 (d)); and see p. 406, *ante*.

(*s*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 9.

(*t*) *Ibid.*, s. 3 (1).

(*u*) *Ibid.*, s. 3 (2).

(*a*) *Ibid.*, s. 3 (3).

(*b*) *Ibid.*, s. 4.

(*c*) *Ibid.*, s. 5 (1).

(*d*) *Ibid.*, s. 5 (2).

(*e*) *Ibid.*, s. 3.

(*f*) This may be either with the defendant himself or with another man (*R.* v. *Williams* (1898), 62 J. P. 310).

(*g*) If these are set out (and in *R.* v. *Field*, Central Criminal Court Sessions Papers, 1891, it was held that it was necessary to do so), they need not be negatived in the indictment (*R.* v. *Clarke and Lyons* (1895), 59 J. P. 248).

thereby to enable any person to have unlawful carnal connection with her.

The punishment for any such offence is imprisonment with or without hard labour for not more than two years (*h*).

No person may be convicted of any such offence upon the evidence of one witness, unless such witness be corroborated in some material particular by evidence implicating the accused (*i*).

Unlawful carnal knowledge of girl under thirteen.

1245. Any person is by statute (*k*) guilty of felony who unlawfully and carnally knows any girl under the age of thirteen years.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*l*).

The legal presumption that a boy under the age of fourteen years cannot be guilty of rape extends to this offence (*m*).

Attempt.

Any person is by statute (*n*) guilty of a misdemeanour who attempts to commit this offence.

The punishment is imprisonment with or without hard labour for not more than two years, and both in this and the last-mentioned offence, if the offender's age does not exceed sixteen years, the court may, instead of sentencing him to imprisonment, order him to be sent to a reformatory for not more than five nor for less than two years (*o*).

In a prosecution either for the completed felony or for the attempt the consent of the girl is immaterial (*p*).

Conviction of other offences on an indictment for carnal knowledge of girl under thirteen.

1246. If upon an indictment for the felony of carnally knowing a girl under the age of thirteen years the jury are satisfied that the prisoner is guilty (1) of procuring or attempting to procure the girl by threats or intimidation to have any unlawful carnal connection; (2) of procuring her to have unlawful connection by false pretences, if she is not a common prostitute or of known immoral character; (3) of causing to be taken by the girl any drug or thing with intent to stupefy her so as to enable any person to have such connection with her; (4) of an attempt to have such connection; (5) of carnally knowing or attempting to have carnal knowledge of a girl under the age of sixteen years, or of an imbecile; or (6) of an indecent assault, but are not satisfied that he is guilty of the felony charged in the indictment, the jury may acquit him of the felony

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(*h*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 3. No offence under this Act is triable at quarter sessions (*ibid.*, s. 17).

(*i*) *Ibid.*, s. 3; *R.* v. *Staub* (1909), 2 Cr. App. Rep. 6.

(*k*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 4. As to the unsworn evidence of a child of tender years upon a charge of this kind, see p. 408, *ante*.

(*l*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions (Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 17).

(*m*) *R.* v. *Waite*, [1892] 2 Q. B. 600, C. C. R. The judges expressed different opinions as to whether he could be convicted of the attempt.

(*n*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 4.

(*o*) *Ibid.*; Children Act, 1908 (8 Edw. 7, c. 67), ss. 57 and 134 (3), and Third Schedule.

(*p*) *R.* v. *Beale* (1865), L. R. 1 C. C. R. 10.

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and find him guilty of any one of the above offences. Thereupon the prisoner may be punished as if he had been convicted on an indictment for that offence (*q*).

A boy under fourteen who is indicted for the felony of carnally knowing a girl under thirteen may on that indictment be convicted of an indecent assault (*r*).

The prisoner may be convicted of an indecent assault, although the girl consented to the act (*s*).

Unlawful carnal knowledge of girl over thirteen and under sixteen.

1247. Any person is by statute (*a*) guilty of a misdemeanour who unlawfully and carnally knows or attempts to have unlawful carnal knowledge of a girl of or above the age of thirteen years and under the age of sixteen years. The consent of the girl is immaterial.

The punishment is imprisonment with or without hard labour for not more than two years (*b*).

It is a sufficient defence to such a charge that the defendant had reasonable cause to believe that the girl was of or above the age of sixteen years (*c*).

No prosecution for the last-named offence can be commenced more than six months after the commission of the offence (*d*).

In these cases of carnal knowledge of girls under the age of thirteen or sixteen it is sufficient for the prosecution to prove penetration, the crime being complete without emission (*e*).

A girl under the age of sixteen years cannot be convicted of inciting a man to the commission of the offence of unlawful carnal knowledge of her, or of aiding and abetting him in committing it (*f*).

Evidence of age.

1248. An extract from a register of births, which is proved to be an examined copy or extract, or which purports to be signed and certified as a true copy or extract by the officer intrusted with custody of the original, is sufficient evidence of the age of the prosecutrix, if she is identified as the person named in the

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(*q*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 9. But he cannot, it appears, be convicted of a common assault (*R.* v. *Catherall* (1875), 13 Cox, C. C. 109. It was held that upon a charge of felony under s. 4 of the above Act the prisoner might be convicted of an indecent assault although the unsworn evidence of a child was received against him (as to which see p. 408, *ante*), and although there was no other sufficient evidence against him (*R.* v. *Wealand* (1888), 20 Q. B. D. 827, C. C. R.; and see Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 15; and Children Act, 1908 (8 Edw. 7, c. 67), s. 30).

(*r*) *R.* v. *Williams*, [1893] 1 Q. B. 320, C. C. R.

(*s*) Criminal Law Amendment Act, 1880 (43 & 44 Vict. c. 45), s. 2.

(*a*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 5 (1).

(*b*) *Ibid.*

(*c*) *Ibid.*

(*d*) *Ibid.* Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15), s. 27. If the original prosecution upon which the prisoner was committed for trial was one of rape, and was commenced within the six months, the prosecution will be in time, even though the prisoner is tried only on an indictment for the statutory misdemeanour at a date when the six months have expired (*R.* v. *West*, [1898] 1 Q. B. 174, C. C. R.).

(*e*) *R.* v. *Marsden*, [1891] 2 Q. B. 149, C. C.R.

(*f*) *R.* v. *Tyrrell*, [1894] 1 Q. B. 710, C. C. R.

extract (*g*). But her age may also be proved by any lawful evidence (*h*).

1249. Upon an indictment for carnally knowing a girl between the ages of thirteen and sixteen and for assaulting her the defendant may, if there was no consent on the part of the girl, be convicted of a common assault (*i*).

Owner etc. of premises suffering defilement of girl on the premises.

1250. Any person is by statute (*k*) guilty of felony who, being the owner or occupier of any premises or assisting in the management or control thereof, induces or knowingly suffers any girl under the age of thirteen years to resort to or be upon such premises for the purpose of being unlawfully and carnally known.

The punishment is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*l*).

Any such person is by statute (*m*) guilty of a misdemeanour if the girl is above the age of thirteen and under the age of sixteen years.

The punishment is imprisonment for not more than two years with or without hard labour (*n*).

In either case it is a sufficient defence that the accused had reasonable cause to believe that the girl was of or above the age of sixteen years (*o*).

The father or mother of the girl may be convicted of either offence, although she was living at home with them (*p*).

SUB-SECT. 3.—*Incest.*

Incest.

1251. Any male person is by statute (*q*) guilty of a misdemeanour who has carnal knowledge of a female who is to his knowledge his granddaughter, daughter, sister, or mother.

The punishment for this offence is penal servitude for not more than seven or for not less than three years, or imprisonment with or without hard labour for not more than two years; if it is alleged in the indictment and proved that the female is under the age of thirteen years, the accused may be sentenced to penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years; if the age of the accused does not exceed sixteen years, he may be sentenced to be whipped and in

(*g*) Evidence Act, 1851 (14 & 15 Vict. c. 99), s. 14; *R.* v. *Weaver* (1872), L. R. 2 C. C. R. 85.

(*h*) Even by the evidence of persons who have seen her and speak as to their belief with regard to her age (*R.* v. *Cox*, [1898] 1 Q. B. 179, C. C. R.).

(*i*) *R.* v. *Bostock* (1893), 17 Cox, C. C. 700. See also *R.* v. *Guthrie* (1870), L. R. 1 C. C. R. 241.

(*k*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 6 (1).

(*l*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*m*) Criminal Law Amendment Act, 1885, *supra*, s. 6 (2).

(*n*) *Ibid.*

(*o*) *Ibid.*

(*p*) *R.* v. *Webster* (1885), 16 Q. B. D. 134, C. C. R.; but not where the parent has permitted intercourse on one occasion for the purpose of obtaining evidence against a man who has previously seduced the girl (*R.* v. *Merthyr Tydfil Justices* (1894), 10 T. L. R. 375). See also p. 542, *ante*.

(*q*) Punishment of Incest Act, 1908 (8 Edw. 7, c. 45), s. 1. Offences under this Act are not triable at quarter sessions (*ibid.*, s. 4).

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addition to be sent to a reformatory for not less than two years or more than five years (*r*). It is immaterial whether the carnal knowledge was had with the consent of the female (*r*).

Attempt.

1252. Any male person is by statute (*s*) guilty of a misdemeanour who attempts to commit any such offence. The punishment is imprisonment for not more than two years with or without hard labour (*t*).

Guardianship.

1253. Upon the conviction of the full offence or of an attempt to commit it against a female under twenty-one years of age, the court may divest the offender of all authority over her, and if he is her guardian, remove him from such guardianship, and in any such case may appoint any person or persons to be her guardian or guardians during her minority or any less period, provided that the High Court may at any time vary or rescind the order by the appointment of any other person as such guardian, or in any other respect (*a*).

Female permitting incest.

1254. A female of or above the age of sixteen is by statute (*b*) guilty of a misdemeanour who permits a person who is to her knowledge her grandfather, father, brother, or son to have carnal knowledge of her.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*c*).

In the above-mentioned provisions the terms "brother" and "sister" include half-brother and half-sister, and such provisions apply whether the relationship between the accused and the person with whom the offence is committed is traced through lawful wedlock or not (*d*).

The Vexatious Indictments Act, 1859 (*e*), applies to these offences.

Conviction on indictment for rape.

1255. If on the trial of an indictment for rape the jury are satisfied that the defendant is guilty of an offence under the Punishment of Incest Act, 1908, but are not satisfied that he is guilty of rape, they may acquit him of rape and find him guilty of an offence against that Act; and on a trial for an offence against that Act a defendant may be acquitted of that offence and convicted of an offence (*f*) under ss. 4 or 5 of the Criminal Law Amendment Act, 1885 (*g*).

Witnesses.

1256. Upon prosecutions for incest under the Punishment of Incest Act, 1908 (*h*), the wife or husband of the accused may be

(*r*) Punishment of Incest Act, 1908 (8 Edw. 7, c. 45); Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.
(*s*) *Ibid.*, s. 1.
(*t*) *Ibid.*
(*a*) *Ibid.*
(*b*) *Ibid.*, s. 2.
(*c*) *Ibid.*; Penal Servitude Act, 1891, *supra*, s. 1.
(*d*) Punishment of Incest Act, 1908 (8 Edw. 7, c. 45), s. 3.
(*e*) 22 & 23 Vict. c. 17.
(*f*) Punishment of Incest Act, 1908 (8 Edw. 7, c. 45), s. 4 (1), (2), (3).
(*g*) 48 & 49 Vict. c. 69; as to these offences, see p. 614, *ante*.
(*h*) 8 Edw. 7, c. 45.

called as a witness either for the prosecution or the defence, and without the consent of the person charged (*i*).

1257. All proceedings under the Punishment of Incest Act, 1908 (*k*), are to be held *in camera* (*l*). No prosecution for any offence under the Act can be commenced without the sanction of the Attorney-General, except in the case of a prosecution commenced by or on behalf of the Director of Public Prosecutions (*m*).

Proceedings *in camera*.

Sanction necessary.

SUB-SECT. 4.—*Indecent Assault.*

1258. Any person is by statute (*n*) guilty of a misdemeanour who commits an indecent assault upon a female.

Indecent assault.

The punishment is imprisonment with or without hard labour for not more than two years (*o*).

It is no defence to a charge of indecent assault upon a young person under the age of thirteen to prove that she consented to the act of indecency (*p*), but where she is above the age of thirteen, consent is a sufficient defence (*q*).

SUB-SECT. 5.—*Abduction* (*r*).

1259. Where any woman of any age has any interest, legal or equitable, present or future, absolute, conditional, or contingent in

Abduction of heiresses etc.

(*i*) Punishment of Incest Act, 1908 (8 Edw. 7, c. 45), s. 4 (4); but see p. 614, note (*r*).

(*k*) 8 Edw. 7, c. 45.

(*l*) *Ibid.*, s. 5.

(*m*) *Ibid.*, s. 6.

(*n*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 52.

(*o*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offender may also be fined and required to find sureties for his good behaviour (Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 71). The offence is triable at quarter sessions.

(*p*) Criminal Law Amendment Act, 1880 (43 & 44 Vict. c. 45), s. 2. As to acts of gross indecency committed by a male person with another male person, see p. 539, *ante*.

(*q*) As to consent, see p. 612, *ante*. As to the cross-examination of the prosecutrix with respect to other acts of indecency committed with her consent, the principles stated on p. 613 with respect to rape will apply to charges of indecent assault. As to admitting the unsworn evidence of children of tender years, see p. 408, *ante*. As to a court of summary jurisdiction dealing with an indecent assault on a person under sixteen, see Children Act, 1908 (8 Edw. 7, c. 67), s. 128, and p. 269, note, *ante*.

(*r*) There are certain provisions as to the offence of abduction which although still remaining unrepealed may be said to have fallen into desuetude. The Statute of Westminster the Second (1285) (13 Edw. 1, c. 34) provides that of women carried away with the goods of their husbands, the King shall have suit for the goods so taken away (*ibid.*, s. 3); that if a wife willingly leave her husband and go away and continue with her advouterer, she shall lose her dower, unless her husband takes her back (*ibid.*, s. 4). A punishment of three years' imprisonment is imposed upon a person who carries away a nun from her house, although with her own consent (*ibid.*, s. 5). The rest of that part of the chapter of this statute which relates to rape is repealed by stat. (1828) 9 Geo. 4, c. 31, s. 1. By c. 35 of the stat. Westminster the Second (*supra*) it is provided that concerning children, males or females (whose marriage belongeth to another), taken and carried away, if the ravisher have no right in the marriage, though after he restore the child unmarried, he shall nevertheless be punished for his default by two years' imprisonment; and if he do not restore, or do marry the child after the years of consent, and be not able to "satisfy for" the marriage, he shall abjure the

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any real or personal estate or is a presumptive heiress, coheiress, or one of the next of kin to anyone having such an interest, anyone is by statute (*a*) guilty of felony (1) who from motives of lucre takes away or detains such woman against her will with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person; or (2) who fraudulently allures (*b*), takes away, or detains such woman, being under the age of twenty-one years, out of the possession and against the will of her father or mother or of any other person having the lawful care or charge of her with the like intent.

The punishment is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*c*).

Property of abducted woman.

A person convicted of this offence is incapable of taking any interest or estate in any real or personal property of the woman or in any property which may come to her as heiress or next of kin (*d*).

If the offender has married the woman abducted, such property is, upon the conviction, to be settled in such manner as the Chancery Division of the High Court of Justice shall upon an information by the Attorney-General appoint (*d*).

Consent.

As the offence consists in the abduction or detainer, it is no defence that the woman was at first taken away with her own consent, if she afterwards refuses to continue with the offender, nor is it material that she was ultimately married or defiled with her own consent (*e*).

If the jury are not satisfied that the prisoner acted from motives of lucre, he cannot be convicted of the former of the offences above described (*f*).

Abduction of woman with intent to marry, etc.

1260. Anyone is by statute (*g*) guilty of felony who by force takes away or detains against her will any woman, of any age, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person.

The punishment is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*h*).

Taking or enticing away children under fourteen.

1261. Everyone is by statute (*i*) guilty of felony (1) who unlawfully, either by force or fraud, leads or takes away, or decoys or entices away, or detains any child under the age of fourteen years with intent to deprive any parent, guardian, or other person having

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realm or have perpetual imprisonment. The remainder of this Act is repealed by the Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59), s. 2.

(*a*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 53.

(*b*) *R.* v. *Burrell* (1863), Le. & Ca. 354.

(*c*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 53; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence of abducting a woman or a girl is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*d*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 53.

(*e*) 1 Hawk. P. C., c. 16, Part II., ss. 7, 8 (8th ed., I., 124).

(*f*) *R.* v. *Barratt* (1840), 9 C. & P. 387.

(*g*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 54.

(*h*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*i*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 56.

the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about its person; or (2) who, with any such intent, receives or harbours any such child knowing it to have been by force or fraud so taken or decoyed away or detained.

The punishment for this offence is penal servitude for not more than seven or less than three years, or imprisonment with or without hard labour for not more than two years, and if the offender is a male under sixteen years of age, he may be whipped (*k*).

No one is liable to prosecution for this offence who has claimed any right to the possession of the child so taken or decoyed away or detained, or who is the mother of the child or in the case of an illegitimate child claims to be the father of such child (*l*).

Fraud practised upon either the parent or the child is sufficient to establish the offence (*m*). A person who has been in possession of a child with the consent of its parents, but who unlawfully and against the will of the parents delivers it over to another person, detains the child. In such a case falsehoods told to conceal how the child has been disposed of are evidence of the detainer being fraudulent (*n*).

Abduction of girl under sixteen.

1262. Anyone is by statute (*o*) guilty of a misdemeanour who unlawfully takes or causes to be taken any unmarried girl under the age of sixteen years out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her.

The punishment is imprisonment with or without hard labour for not more than two years (*p*).

What constitutes abduction.

1263. A manual possession by the father or guardian need not be shown. If the girl was a member of his family and under his control, it is sufficient. If she leaves her father's house for a particular purpose with his sanction, she cannot legally be said to be out of his possession (*q*). The taking need not be by force either actual or constructive (*r*), and the consent of the girl, if it has been obtained by the defendant's persuasions, is immaterial (*s*).

(*k*) Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 56; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*l*) *Ibid.* Although the mother may not be convicted of this offence, she may it seems, be convicted of the offence of conspiring with someone else to take a child out of the possession of the person who has the lawful care of it; see *R.* v. *Duguid* (1906), 21 Cox, C. C. 200, C. C. R.; *R.* v. *Crossman* (1908), 98 L. T. 760.

(*m*) *R.* v. *Bellis* (1893), 17 Cox, C. C. 660, C. C. R.

(*n*) *R.* v. *Johnson* (1884), 15 Cox, C. C. 481, C. C. R.

(*o*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 55.

(*p*) *Ibid.*; the defendant may also be fined and required to find sureties for good behaviour (*ibid.*).

(*q*) *R.* v. *Mankletow* (1853), Dears. C. C. 159, JERVIS, C.J.

(*r*) *R.* v. *Mankletow, supra; R.* v. *Frazer* (1861), 8 Cox, C. C. 446; *R.* v. *Baillie* (1859), *ibid.*, 238 (where the girl voluntarily left her home for an hour to be married and then returned, the marriage never having been consummated); *R.* v. *Mycock* (1871), 12 Cox, C. C. 28.

(*s*) *R.* v. *Twistleton* (1668), 1 Lev. 257; *R.* v. *Robins* (1844), 1 Car. & Kir. 456; *R.* v. *Mankletow, supra;* compare *R.* v. *Meadows* (1844), 1 Car. & Kir. 399, a case which it would appear difficult to reconcile with these and other authorities

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The defendant may be convicted, although he took no part in the actual removal of the girl, if he previously solicited her to leave her father, and afterwards received and harboured her when she did so (*t*). But if a girl leaves her father of her own accord, the defendant taking no active part in the matter and not persuading or advising her to leave, he cannot be convicted of this offence, even though he failed to advise her not to come, or to return, and afterwards harboured her (*a*).

The fact that the defendant believed upon reasonable grounds that the girl was sixteen years of age, affords no defence upon a charge of abduction (*b*).

Girl found wandering.

A person who finds a girl wandering in the street and takes her away with him cannot be convicted of abducting her, in the absence of evidence that he knew that she was under the lawful care or charge of her father, mother, or any other person (*c*), nor can a person who takes possession of a child be convicted of this offence, if he honestly believes that he is entitled to the legal custody of the child (*d*).

Temporary taking.

If the taking is intended to be temporary only, and for a purpose not inconsistent with the possession of the father, it does not necessarily amount to a taking out of his possession; but if a girl is taken away for the purpose of being detained for a time in order that she may cohabit with the defendant, the fact that he sent her back after a temporary cohabitation affords no defence (*e*).

Taking from religious motive.

If a girl is taken out of the possession of a person having the lawful custody of her, the person so taking her may be convicted of abducting her, although he was influenced by religious or philanthropic motives (*f*).

Illegitimate child.

The offence is committed by anyone who takes a female illegitimate child from the custody of its mother or its putative father (*g*).

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but for the fact that the defendant was herself a girl, and the two girls wandered away together. See the observations of MAULE, J., on this case in *R.* v. *Kipps* (1850), 4 Cox, C. C. 167, at p. 168. The marginal note to *R.* v. *Meadows* is misleading; see the observations of the judges in *R.* v. *Mankletow* (1853), Dears. C. C. 159; see also on this subject *R.* v. *Miller* (1876), 13 Cox, C. C. 179, LUSH, J.

(*t*) *R.* v. *Robb* (1864), 4 F. & F. 59, POLLOCK, C.B.; *R.* v. *Handley* (1859) 1 F. & F. 648, WIGHTMAN, J.

(*a*) *R.* v. *Olifier* (1866), 10 Cox, C. C. 402, BRAMWELL, B.; *R.* v. *Jarvis* (1903), 20 Cox, C. C. 249; see, however, the observations of ALDERSON, B., in *R.* v. *Biswell* (1847), 2 Cox, C. C. 279, which, it is submitted, are not in accordance with the views expressed by judges in the later cases.

(*b*) *R.* v. *Prince* (1875), L. R. 2 C. C. R. 154.

(*c*) *R.* v. *Green and Bates* (1862), 3 F. & F. 274; *R.* v. *Hibbert* (1869), L. R. 1 C. C. R. 184.

(*d*) *R.* v. *Tinkler* (1859), 1 F. & F. 513; see also *R.* v. *Prince, supra*, at p. 175; and as to children under fourteen years of age, see Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 56, and p. 620, *ante*.

(*e*) *R.* v. *Timmins* (1860), Bell, C. C. 276; *R.* v. *Baillie* (1859), 8 Cox, C. C. 238.

(*f*) *R.* v. *Booth* (1872), 12 Cox, C. C. 231, QUAIN, J. "Though the statute probably principally aims at seduction for carnal purposes, the taking may be by a female with a good motive; though there may be such cases which are not immoral in one sense, I say that the act forbidden is wrong" (*R.* v. *Prince, supra, per* BRAMWELL, B., at p. 174).

(*g*) 1 Hawk. P. C., c. 16, s. 14 (8th ed., I., 128); 1 East, P. C. 457; *R.* v.

The taking out of possession must be against the will of the father, mother, or other person having the lawful care or charge of the girl. A taking with the consent of the parent or guardian, if such consent is obtained by fraudulent misrepresentations, is a taking against his will (*h*).

The fact that a parent has countenanced a lax, though not necessarily an immoral, course of life by the girl may in some cases be evidence that the taking out of his possession, though unknown to him, was not against his will (*i*).

Abduction of girl under eighteen.

1264. Everyone is by statute (*k*) guilty of a misdemeanour who, with intent that any unmarried girl under the age of eighteen years should be unlawfully and carnally known by any man or men, takes or causes to be taken such girl out of the possession and against the will of her father or mother or any other person having the lawful care or charge of her.

The punishment is imprisonment with or without hard labour for not more than two years (*a*).

It is a sufficient defence to such a charge, if it is made to appear to the court that the defendant had reasonable cause to believe that the girl was of or above the age of eighteen years (*b*).

SECT. 3.—*Cruelty to Children* (*c*).

Neglect to provide food etc. for infants.

1265. Any person is at common law guilty of a misdemeanour who, being obliged by duty or contract to provide for an infant of tender years unable to provide for and take care of itself, whether such infant is the child, apprentice or servant of such person, refuses or neglects to provide sufficient food or bedding for such infant so as thereby to injure its health (*d*).

The punishment for this offence is fine and imprisonment without hard labour (*e*).

Neglect to provide food etc. for servants.

1266. Any master or mistress is by statute (*f*) guilty of a misdemeanour who, being legally liable to provide for his or her apprentice or servant necessary food, clothing, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, or unlawfully

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Cornfort (or *Cornforth*) (1742), 1 Bott and Const, Poor Laws, 6th ed., p. 458; 2 Stra. 1162. As to the possession of the mother, see *R.* v. *Hopkins* (1806), 7 East, 579.

(*h*) *R.* v. *Hopkins* (1842), Car. & M. 254.

(*i*) *R.* v. *Primelt* (1858), 1 F. & F. 50.

(*k*) Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 7. The cases already cited (pp. 621, 622, *ante*) as to when a girl is to be considered in the possession of her parents, and as to what amounts to taking her out of such possession, apply to prosecutions under this section (see *R.* v. *Henkers* (1886), 16 Cox, C. C. 257). To warrant a conviction there must be evidence that she was induced by the defendant to leave her home (*R.* v. *Kauffman* (1904), 68 J. P. 189, BOSANQUET, K.C., Common Serjeant).

(*a*) Criminal Law Amendment Act, 1885, *supra*, s. 7.

(*b*) *Ibid.*

(*c*) For abduction of children, see p. 620, *ante*.

(*d*) *R.* v. *Friend* (1802), Russ. & Ry. 20; *R.* v. *Hogan* (1851), 2 Den. 277, C. C. R.; *R.* v. *Phillpott* (1853), 22 L. J. (M. C.) 113, C. C. R.

(*e*) The offence is triable at quarter sessions.

(*f*) Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 26.

SECT. 3. Cruelty to Children.

and maliciously does or causes to be done any bodily harm to such apprentice or servant so that his life is endangered or his health is, or is likely, to be permanently injured.

The punishment is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years. The defendant may also be fined and required to find sureties for good behaviour (*g*).

Neglect of children.

1267. Every person over the age of sixteen years is by statute (*h*) guilty of a misdemeanour who, having the custody, charge, or care (*i*) of any child or young person (*k*), wilfully assaults, illtreats,

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(*g*) Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 26; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The neglect to provide necessary food, clothing, medical aid or lodging to a servant or apprentice, if the master or mistress is legally bound to provide it, is also punishable summarily by a fine of £20 or imprisonment for six months (Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 6). The defendant has by s. 9 a right to elect to be tried on indictment.

At common law, apart from any contractual liability to provide food, clothing and other necessaries, the master of an apprentice who resides with him, or of a servant who is of tender years, or is so far under the master's restraint or dominion by helplessness of body or mind as to be unable to withdraw himself from his control, is liable to be indicted, if he wilfully neglects to supply such necessaries, and if by reason of such neglect the apprentice or servant dies or is seriously injured in health. In such a case the indictment must allege the tender years or helplessness of the servant (*R.* v. *Gould* (1704), 1 Salk. 381; *R.* v. *Self* (1776), 1 Leach, 137 (S. C. 1 East, P. C. 226); *R.* v. *Ridley* (1811), 2 Camp. 650; *R.* v. *Smith* (1865), Le. & Ca. 607). A master is not, apart from contract, legally bound to provide medical attendance for his servant (*Wennall* v. *Adney* (1802), 3 Bos. & P. 247; *Sellen* v. *Norman* (1829), 4 C. & P. 80); but it is otherwise in the case of an apprentice living with the master (*R.* v. *Smith* (1837), 8 C. & P. 153).

(*h*) Children Act, 1908 (8 Edw. 7, c. 67), s. 12 (1).

(*i*) A person who is the parent or legal guardian of a child or young person, or who is legally liable to maintain him, is to be presumed to have the custody of him, and as between father and mother the father is not to be deemed to have ceased to have the custody of the child or young person by reason only that he has deserted or does not reside with the mother; any person to whose charge a child or young person is committed by any person who has the custody of him is to be presumed to have charge of him; and any other person having actual possession or control of a child or young person is to be presumed to have the care of him (*ibid.*, s. 38 (2)); see *R.* v. *Connor*, [1908] 2 K. B. 26. In the case of an illegitimate child the father is not the "parent" of the child, or a person "legally liable to maintain him," until he is declared to be so by affiliation proceedings instituted for that purpose (*Butler* v. *Gregory* (1902), 18 T. L. R. 370).

(*k*) "Child" for the purposes of the Act means a person under the age of fourteen years (*ibid.*, s. 131); "young person" in the Act means a person who is fourteen years of age and under the age of sixteen (*ibid.*). Where in a charge or an indictment for an offence against the Children Act, 1908 (8 Edw. 7, c. 67), or against ss. 27, 55, or 56 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), or any offence against a child or young person under ss. 5, 42, 43, 52, or 62 of that Act, or against the Dangerous Performances Acts, 1879 and 1897 (42 & 43 Vict. c. 34; 60 & 61 Vict. c. 52), or for any other offence involving bodily injury to a child or young person (except an offence under the Criminal Law Amendment Act (1885)), it is alleged that the person by or in respect of whom the offence was committed was a child or young person or was under or above any specified age, and he appears to the court to have been so, at the date of the commission of the alleged offence, he is for the purposes of the Children Act, 1908 (8 Edw. 7, c. 67), to be presumed at that date to have been a child etc., unless the contrary is proved (*ibid.*, s. 123 (2); see also *R.* v. *Cox*, [1898] 1 Q. B. 179, C. C. R.).

neglects, abandons, or exposes (*l*) such child or young person, or causes or procures him to be assaulted, illtreated, neglected, abandoned, or exposed in a manner likely to cause him unnecessary suffering or injury to health (*m*).

The punishment for this offence upon conviction on indictment is a fine of £100, or alternatively, or in default of payment of such fine, or in addition thereto, imprisonment with or without hard labour for not more than two years (*n*). If it is proved that the accused was to his knowledge directly or indirectly interested in any sum of money payable in the event of the death of the child or young person, then in the case of a conviction on indictment the fine may be increased to £200, or in lieu of any other penalty the accused may be sentenced to penal servitude for five years (*o*).

Meaning of neglect.

1268. A parent or other person legally liable to maintain a child or young person is deemed to have neglected (*a*) him in a manner likely to cause injury to his health, if he fails to provide adequate food, clothing, medical aid, or lodging for him, or if being unable to provide it he fails to take steps to procure it under the Acts relating to the relief of the poor (*b*).

A person may be convicted of any of the above offences, notwithstanding that actual suffering or injury to health, or the likelihood thereof, was obviated by the act of another person (*c*), and notwithstanding the death of the child or young person (*d*).

The Children Act, 1908, does not take away or affect the right of any parent, teacher, or other person having the lawful control or

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(*l*) To abandon or expose any child under the age of two years, whereby its life is endangered or its health permanently injured or likely to be so, is also a misdemeanour punishable by penal servitude for five years or imprisonment with or without hard labour for not more than two years (Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 27).

(*m*) Injury to health includes injury to or loss of sight or hearing or limb or organ of the body and any mental derangement (Children Act, 1908 (8 Edw. 7, c. 67), s. 12 (1)).

(*n*) Children Act, 1908 (8 Edw. 7, c. 67), s. 12 (1). On summary conviction the punishment is a fine of £25, or in default of payment of or in addition to such fine six months' imprisonment with or without hard labour (*ibid.*).

(*o*) Children Act, 1908 (8 Edw. 7, c. 67), s. 12 (5). The accused is to be deemed to be interested in such sum of money, if he has any share in or any benefit from the payment of the money, although he is not the person to whom it is legally payable (*ibid.*, s. 12 (6)). A copy of a policy of insurance, certified by an officer or agent of the insurance company granting it to be a true copy, is *primâ facie* evidence that the child or young person therein named has been insured, and that the person in whose favour the policy has been granted is the person to whom the money insured is legally payable (*ibid.*, s. 12 (7)). As to the disposal of the child or young person by order of court when the person having the charge or custody of him is convicted of cruelty, or committed for trial for that offence, see *ibid.*, ss. 21, 22, 23.

(*a*) Neglect is the want of reasonable care, that is, the omission of such steps as a reasonable parent would take, and such as are usually taken in the ordinary experience of mankind. "Wilfully" means that the act is done deliberately and intentionally, not by accident or inadvertently, but so that the mind of the person who does the act goes with it (*R.* v. *Senior*, [1899] 1 Q. B. 283, 291, C. C. R.). As to the common law obligation in these cases, see p. 584, *ante*.

(*b*) Children Act, 1908 (8 Edw. 7, c. 67), s. 12 (1). See title POOR LAW.

(*c*) *Ibid.*, s. 12 (2).

(*d*) *Ibid.*, s. 12 (3).

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charge of a child or young person to administer punishment to him (*e*).

Overlaying child.

1269. Where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) whilst it was in bed with some other person over sixteen years of age, who was at the time of going to bed under the influence of drink, that person is deemed to have neglected the infant in a manner likely to cause injury to its health (*f*).

Procedure.

1270. Upon the trial of any person over the age of sixteen indicted for the manslaughter of a child or young person of whom he had the custody, charge, or care the jury may convict him of one of the above-mentioned offences (*g*).

The wife or husband of a person charged with any of the above offences may be called as a witness, either for the prosecution or defence, and without the consent of the person charged (*h*).

Where any of the above-mentioned offences is a continuous offence, it is not necessary to specify in the indictment the date of the acts constituting the offence (*i*).

The Vexatious Indictments Act, 1859 (*j*), applies to misdemeanours under the Children Act, 1908 (*k*).

Dangerous performances

1271. Where in the course of a public exhibition or performance which in its nature is dangerous to the life or limb of a male under the age of sixteen years or of a female under the age of eighteen years taking part therein any accident causing actual bodily harm occurs to any such person, the employer of any such male or female is liable to be indicted as having committed an assault, and the court may award compensation not exceeding £20 for the bodily harm so occasioned, to be paid by the employer to such person or to some person named by the court on his or her behalf (*l*).

(*e*) Children Act, 1908 (8 Edw. 7, c. 67), s. 37. See as to this right, p. 608, *ante*.

(*f*) *Ibid.*, s. 13.

(*g*) *Ibid.*, s. 12 (4).

(*h*) *Ibid.*, s. 27; Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 4 (1). The Children Act, 1908 (8 Edw. 7, c. 67), contains provisions as to the use of the deposition of a child or young person, and as to taking the evidence of a child of tender years in proceedings under that Act, or for any offence under ss. 27, 55 or 56 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), or for any offence against a child or young person under ss. 5, 42, 43, 52 or 62 of that Act, or under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), or any offence under the Children's Dangerous Performances Act, 1879 (42 & 43 Vict. c. 34), or under the Dangerous Performances Act, 1897 (60 & 61 Vict. c. 52), or any other offence involving bodily injury to a child or young person (Children Act, 1908 (8 Edw. 7, c. 67), ss. 28—31; and see p. 408, *ante*).

(*i*) *Ibid.*, s. 32 (4). But if dates are given, the court may refuse to allow the prosecution to adduce evidence of occurrences on other dates (*R.* v. *Miller* (1901), 65 J. P. 313).

(*j*) 22 & 23 Vict. c. 17; as to which, see p. 331, *ante*.

(*k*) Children Act, 1908 (8 Edw. 7, c. 67), s. 35.

(*l*) Children's Dangerous Performances Act, 1879 (42 & 43 Vict. c. 34), s. 3; Dangerous Performances Act, 1897 (60 & 61 Vict. c. 52), s. 1. The former Act provides a penalty on summary conviction in cases where the performance is dangerous but no actual injury has been caused.

SECT. 4.—*Offences relating to Lunatics and Paupers.*

SECT. 4. Offences relating to Lunatics and Paupers.

1272. The offences of taking charge of a lunatic without authority, of illtreating lunatics, and other offences against the laws of lunacy, and the offence of procuring the marriage of paupers, and other offences against the poor laws, are dealt with in other parts of this work (*m*).

Part XIII.—Offences against Property.

SECT. 1.—*Taking Property.*

SUB-SECT. 1.—*Larceny.*

(i.) *Definition and Punishment.*

Definition of larceny.

1273. Larceny is the felonious taking of the property of another, without his consent and against his will, with intent to convert it to the use of the taker (*n*).

Larceny is a felony; it is usually distinguished as being simple or compound. Compound larceny is simple larceny with aggravations of time, person, place, manner or subject-matter (*o*).

Punishment.

1274. The punishment for simple larceny, or for any felony made punishable like simple larceny, except in cases otherwise provided for (*p*), is penal servitude for not more than five or for not less than three years, or imprisonment with or without hard labour for not more than two years, and in the case of a male under the age of sixteen years, a whipping (*a*).

(*m*) See titles LUNATICS AND PERSONS OF UNSOUND MIND; POOR LAW, respectively.

(*n*) *R.* v. *Hammon* (1812), 2 Leach, 1083, 1089; see Bract., lib. 2, cap. 32 (1), "*furtum est secundum leges contractatio rei alienæ fraudulenta, cum animo furandi, invito illo domino cujus res illa fuerit.*" The former part of this definition is clearly taken from 4 Just. Inst. tit. 1 (1).

(*o*) The former distinction of "grand" and "petty larceny" was abolished by stat. 7 & 8 Geo. 4, c. 29, s. 2, re-enacted by the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 2. As to compound larceny, see 4 Bl. Com. 240.

(*p*) These excepted cases are the following: Larceny after certain previous convictions, which is dealt with at p. 628, *post;* of fixtures etc. by tenants, seven years' penal servitude (p. 639, *post*); by clerks or servants, fourteen years' penal servitude (p. 644, *post*); by public officers, fourteen years' penal servitude (p. 644, *post*); by officers of the Post Office, penal servitude for life or for seven years (p. 645, *post*); of post letters by other persons, penal servitude for life or for fourteen years (p. 644, *post*); of wills, penal servitude for life (p. 642, *post*); of certain animals (see Vol. I., title ANIMALS, p. 368); of certain goods in process of manufacture, fourteen years' penal servitude (p. 644, *post*); from vessels or boats in a haven, port, or navigable river, or canal, or from any dock, wharf, or quay adjacent thereto, fourteen years' penal servitude (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 63); from wrecks etc., fourteen years' penal servitude (p. 640, *post*). As to robbery and other larcenies from the person, see p. 661, *post;* burglary and other larcenies from houses (p. 668, *post*); sacrilege (p. 675, *post*). As to the punishment of larcenies which are dealt with on summary conviction, see title MAGISTRATES.

(*a*) Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 4, 119; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. Larceny is triable at quarter sessions, except when the punishment of penal servitude for life may be awarded on a first conviction, and except misdemeanours under ss. 77—86 of the

SECT. 1. Taking Property.

If the offender has been previously convicted of felony he may be sentenced to ten years' penal servitude, and if he be a male under the age of sixteen years, he may be whipped (*b*).

If the offender has been previously convicted of any indictable misdemeanour punishable under the Larceny Act, 1861 (*c*), or under any Act to be read with it, he may be sentenced to seven years' penal servitude, and in the case of a male under the age of sixteen years to a whipping (*d*).

If he has previously been twice summarily convicted under the Larceny Act, 1861 (*e*), or under the Malicious Damage Act, 1861 (*f*), whether such previous convictions were for offences of the same description or not, he is guilty of felony and may be kept in penal servitude for seven years, or imprisoned for two years with or without hard labour, and in the case of a male under the age of sixteen years may be whipped (*g*).

(ii.) *Constituents of Offence.*

Intention.

1275. To constitute larceny the taking must be felonious, *i.e.*, with a wicked intention, *animus furandi*, and not under a claim of right made by the person taking (*h*).

Claim of right.

To prevent the taking from being felonious, the claim of right must be an honest one, though it may be unfounded in law or in fact. If the claim is not made in good faith, but is a mere colourable pretence to obtain or to keep possession, it will not avail as a defence (*i*).

Larceny Act, 1861 (24 & 25 Vict. c. 96), and the Larceny Act, 1901 (1 Edw. 7, c. 10).

(*b*) Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 7, 119. As to the mode of charging previous convictions, see s. 116.

(*c*) 24 & 25 Vict. c. 95.

(*d*) *Ibid.*, s. 8; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*e*) 24 & 25 Vict. c. 96.

(*f*) 24 & 25 Vict. c. 97.

(*g*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 9. (The other statutes mentioned in this section have been repealed.)

(*h*) 2 East, P. C. 659; 1 Hale, P. C. 506, 509; *R.* v. *Hall* (1828), 3 C. & P. 409. The mere sale of pirated music is not larceny, notwithstanding s. 23 of the Copyright Act, 1842 (5 & 6 Vict. c. 45) (*R.* v. *Kidd* (1907), 72 J. P. 104). See title COPYRIGHT AND LITERARY PROPERTY, Vol. VIII., p. 167.

(*i*) *R.* v. *Wade* (1869), 11 Cox, C. C. 549, BLACKBURN, J. If a man, with intent to steal the goods of another impounded for a distress, obtains the delivery of them to himself by proceedings in replevin, and then carries them away, he may be convicted of larceny, the replevin being *in fraudem legis* (3 Co. Inst. 108; 1 Hale, P. C. 507; 2 East, P. C. 660); see also *R.* v. *Farr* (1665), Kel. 43, where the prisoners, intending to rob the occupant of his goods, had fraudulently and without any right to a house obtained judgment in ejectment and were put into possession by the sheriff, and they were held rightly convicted of breaking into the house and stealing the goods in it. It should, however, be observed that in neither of these cases had there been a real adjudication in a civil court as to the ownership of the property in question; and see *R.* v. *Hemmings* (1864), 4 F. & F. 50, where the prosecutor, a creditor of the prisoner, assaulted him violently, and compelled him to give him a cheque on account of the debt; ERLE, C.J., held that the intent was not felonious. As to goods in the custody of the law, see *R.* v. *Knight* (1908), 25 T. L. R. 87, C. C. A.

1276. To constitute larceny there must also be an intention to deprive the owner permanently of the goods taken, and the knowledge that they are not the goods of the person taking.

Mistake or accident.

Where goods are taken by mistake or accident (*k*), or by a mere trespass, and there is at the time an intention to return them, and no subsequent intention to deprive the owner permanently of his property in the goods, there is no larceny (*l*).

Intention to redeliver.

When the goods taken have been realised, either by sale or pledging, and the proceeds appropriated by the prisoner, the fact that he intended ultimately, if he had the power to do so, to regain possession, and redeliver the goods to the owner is no defence, unless the accused not only had that intention at the time when he took the goods, but there was also then a strong probability and a belief on his part that he would have the power of regaining possession of and redelivering the goods (*m*).

It is not necessary to show that the taking was *lucri causâ* if it was fraudulent and with an intent wholly to deprive the owner of the property (*n*).

(*k*) 1 Hale, P. C. 507; 2 East, P. C. 661.

(*l*) 1 Hale, P. C. 509; 2 East, P. C. 661. In the following cases the taking was held not to be felonious: *R.* v. *Phillips* (1801), 2 East, P. C. 662; *R.* v. *Crump* (1825), 1 C. & P. 658 (horse taken from a stable wrongfully, ridden many miles, and left at another stable); *R.* v. *Webb* (1835), 1 Mood. C. C. 431; *R.* v. *Holloway* (1848), 2 Car. & Kir. 942; *R.* v. *Poole* (1857), Dears. & B. 345 (workmen taking goods of their masters temporarily for the purpose of fraudulently increasing their rate of wages); compare *R.* v. *Hall* (1849), 2 Car. & Kir. 947, C. C. R., where a servant took his master's goods from one part of a warehouse to another and tried to sell them to the master, this was held to be larceny; see also *R.* v. *Manning* (1852), 6 Cox, C. C. 86, C. C. R.; *R.* v. *Richards* (1844), 1 Car. & Kir. 532; *R.* v. *Dickinson* (1820), Russ. & Ry. 420 (taking away a girl's clothes in order that she might come for them, and so give the prisoner an opportunity to solicit her to commit fornication); *R.* v. *Bailey* (1872), L. R. 1 C. C. R. 347 (taking warrants forcibly from a bailiff in order to defeat an execution; but a conviction on another count in the indictment, under s. 30 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), for fraudulently taking the warrants was held to be good); *Hewson* v. *Gamble* (1892), 56 J. P. 534 (coffee taken by the vendor from an inspector who had bought it for analysis).

(*m*) *R.* v. *Wright* (1828), 9 C. & P. at p. 554, n.; *R.* v. *Phetheon* (1840), 9 C. & P. 553; *R.* v. *Medland* (1851), 5 Cox, C. C. 292; *R.* v. *Trebilcock* (1858), Dears. & B. 453.

(*n*) *R.* v. *Cabbage* (1815), Russ. & Ry. 292 (where the object of the prisoner was only to destroy a stolen horse); *R.* v. *Wynn* (1848), 2 Car. & Kir. 859 C. C. R. (letters and money thrown away by a postal official to prevent the discovery of a mistake in sorting); *R.* v. *Jones* (1846), 1 Den. 188 (burning a letter supposed to contain an inquiry as to the prisoner's character).

The case of a servant who improperly abstracted corn etc. belonging to his master, for the purpose of improving the condition of the master's animals, formerly gave rise to some differences of opinion, but it is now provided by the Misappropriation by Servants Act, 1863 (26 & 27 Vict. c. 103), s. 1, that if any servant shall, contrary to the orders of his master, take from his possession any corn or other food for the purpose of giving the same to any horse or other animal belonging to or in the possession of his master, he shall not be deemed guilty of felony, but shall be liable on summary conviction to imprisonment with or without hard labour for three months or a fine of £5. If the justices upon the hearing of the charge are of opinion that it is too trifling, or that it is inexpedient to inflict any punishment, they may dismiss the charge without convicting (*ibid.*). If upon the trial of any servant for feloniously taking from

SECT. 1. Taking Property.

Asportation.

1277. There must be what amounts in law to an asportation (*i.e.*, a carrying away) of the goods of the prosecutor; but for this purpose, provided there is some severance, the least removal of the goods from the place where they were is sufficient, although they be not entirely carried off (*o*). The removal, however short the distance may be, from one position to another upon the owner's premises is a sufficient asportation (*p*), and so is a removal or partial removal from one part of the owner's person to another (*q*). But there must be a severance of the goods if fastened, however slight (*r*).

In cases where the asportation cannot be proved, but where the prisoner intended to steal and did some act in furtherance of that object, he may be convicted of attempting to steal (*s*).

The offence of larceny is complete when the goods have once been taken with a felonious intention, although the prisoner may have returned them and his possession continued for an instant only (*t*).

Finding lost articles.

1278. It is a felonious taking, and constitutes larceny, if the prisoner, finding goods which were lost, or supposed to be lost, and reasonably believing at the time that the owner can be found, appropriates them to his own use without making a reasonable attempt to find the owner (*a*). Although the finder may afterwards have intended to appropriate the goods whether the owner was found or not (*b*), or

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his master any corn or other food consumable by horses or other animals the servant alleges that he took the same under such circumstances as would constitute an offence punishable under the last-mentioned Act and satisfies the jury thereof, the jury may return a verdict accordingly, and the court is to award such punishment as might be awarded by justices upon a conviction under the Act (*ibid.*).

(*o*) 2 East, P. C. 555.

(*p*) *R.* v. *Walsh* (1824), 1 Mood. C. C. 14 (where the prisoner tried to remove a bag from the boot of a coach but did not succeed in getting it entirely out); *R.* v. *Coslet* (1782), 1 Leach, 236 (parcel moved from one end of a waggon to the other); in both cases it was held that larceny had been committed; compare *R.* v. *Cherry* (1781), 1 Leach, 236, n. (where the prisoner stood a bale of goods up on end, but apparently did not otherwise remove it from the spot on which it had been placed; this was held not to be such a removal as to constitute larceny).

(*q*) *R.* v. *Thompson* (1825), Mood. C. C. 78 (lifting a pocket-book an inch above the top of a pocket); *R.* v. *Simpson* (1854), Dears. C. C. 421; *R.* v. *Lapier* (1784), 1 Leach, 320.

(*r*) 1 Hale, P. C. 508, 533; 2 East, P. C. 556 (where a case is mentioned in which goods were in a shop tied to a string and the prisoner, intending to steal them, removed them as far as the string would allow, this being held not to be such a severance as to constitute larceny); see, however, *R.* v. *Simpson*, *supra*. In *R.* v. *Farrell* (1787), 1 Leach, 322, n., the prosecutor, who was carrying a bed, was compelled by the prisoner's threats to put it on the ground; the prisoner intended to steal it, but before he could touch it, he was apprehended. It was held that this was not larceny). See *R.* v. *Cheeseman* (1862), Le. & Ca. 140.

(*s*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 9, see p. 373, *ante*.

(*t*) *R.* v. *Peat* (1781), 1 Leach, 228; 2 East, P. C. 557; and see *R.* v. *Greenaway* (1908), 72 J. P. 389, C. C. A.

(*a*) *R.* v. *Thurborn* (1849), 1 Den. 387; *R.* v. *Kerr* (1837), 8 C. & P. 176; *Merry* v. *Green* (1841), 7 M. & W. 623; *R.* v. *Rowe* (1859), Bell, C. C. 93; *R.* v. *Mortimer* (1908), 72 J. P. 349, C. C. A.

(*b*) *R.* v. *Matthews* (1873), 12 Cox, C. C. 489, C. C. R.; *R.* v. *Preston* (1851), 2 Den. 353; *R.* v. *Shea* (1856), 7 Cox, C. C. 147, C. C. R. (Ir.); *R.* v. *Christopher* (1858), Bell, C. C. 27; *R.* v. *Moore* (1861), Le. & Ca. 1.

may afterwards have believed that the owner could be found (*c*), he cannot be convicted, unless he had both that intention and belief at the time of the finding.

Larceny by a bailee.

1279. At common law a taking is not felonious if the legal possession of the goods was originally obtained by the accused lawfully and without fraud or trespass, as upon a finding of the goods or upon a delivery in trust for, or on account of, the owner. In such a case, if the person who obtains the goods afterwards fraudulently converts them to his own use, he is not guilty of larceny at common law, unless by some new and distinct act of taking, as by wrongfully severing part of the goods from the bulk, he determines the bailment, and the special property thereby conferred upon him (*d*).

As regards goods bailed, it is, however, provided by statute (*e*) that whoever, being a bailee (*f*) of any chattel, money, or valuable security, fraudulently takes or converts the same to his own use, or the use of any person other than the owner thereof, although he does not break bulk or otherwise determine the bailment, he is guilty of larceny and may be convicted thereof upon an indictment for larceny. This provision does not extend to any offence punishable on summary conviction (*g*).

An infant may be convicted as a bailee under the above provision (*h*); so also may a married woman (*i*); so also may a person who being intrusted with money to buy goods appropriates

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(*c*) *R.* v. *Yorke* (1848), 2 Car. & Kir. 841, C. C. R. (goods kept in the hope of obtaining a reward), as to which, see also *R.* v. *Peters* (1843), 1 Car. & Kir. 245 and *R.* v. *Gardner* (1862), Le. & Ca. 243; *R.* v. *Glyde* (1868), L. R. 1, C. C. R. 139; *R.* v. *Deaves* (1869), 11 Cox, C. C. 227, C. C. R. (Ir.); *R.* v. *Knight* (1871), 12 Cox, C. C. 102, C. C. R.; *R.* v. *Dixon* (1855), 7 Cox, C. C. 35, C. C. R. In these cases, as there was no bailment, the common law rule prevailed, that to constitute larceny there must have been a felonious intention at the time of the original taking.

The principles which govern the case of larceny of goods found do not apply to articles which are left by passengers in railway carriages. It is the duty of the servants of the railway company to report the finding of such goods to their superiors, and to deliver them up; and if, instead of doing so, they appropriate them to their own use, they are guilty of larceny (*R.* v. *Pierce* (1852), 6 Cox, C. C. 117, WILLIAMS, J.). The same principle no doubt applies to cab drivers and omnibus conductors (see *R.* v. *Lamb* (1694), 2 East, P. C. 664; *R.* v. *Wynne* (1786), 1 Leach, 413; and as to the metropolis, London Hackney Carriage Act, 1853 (16 & 17 Vict. c. 33), s. 11; Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115), s. 9 (5), and the order of the Secretary of State made thereunder). As to the duty of a person who finds a stray dog, see Dogs Act, 1906 (6 Edw. 7, c. 32), s. 4.

(*d*) 2 East, P. C. 554, 693 *et seq.*

(*e*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 3.

(*f*) As to the various kinds of bailments, see title BAILMENT, Vol. I., p 524.

(*g*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 3; *R.* v. *Daynes* (1873), 12 Cox, C. C. 514, C. C. R. As to what larcenies are punishable on summary conviction, see Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 12; Summary Jurisdiction Act, 1899 (62 & 63 Vict. c. 22), s. 2.

(*h*) *R.* v. *McDonald* (1885), 15 Q. B. D. 323, C. C. R.

(*i*) *R.* v. *Robson* (1861), Le. & Ca. 93; see, however, *R.* v. *Denmour* (1861), 8 Cox, C. C. 440. Any doubt there may have been on the matter seems now disposed of by the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75); see title HUSBAND AND WIFE. A bailment by contract is not essential; a bailment by licence is sufficient to bring the case within the statute (*R.* v. *Robson, supra; R.* v. *McDonald, supra*).

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either the money or the goods to his own use (*k*), or one who having received goods for sale or upon which to raise an advance appropriates the proceeds (*l*).

The deposit of money under such circumstances as to constitute a mere debt, or where the money is to be mixed with other moneys and the same coins are not to be returned, is not a bailment within the meaning of the above provision (*m*).

Evidence of conversion which would be sufficient to support an action of trover will not necessarily justify a conviction for larceny by a bailee, even though a fraudulent intention be proved; it must be shown that an act was done by the prisoner inconsistent with the purposes of the bailment and analogous to larceny, and there must be a definite time when the act of conversion can be said to have taken place (*n*).

Larceny by a bailee.

A servant having the manual custody of his master's goods is not a bailee of them. His possession is in law the possession of the master, and if he misappropriates the goods, he is guilty of larceny at common law (*o*).

If a person has the bare use (*p*) or custody (*q*) of a thing, or receives goods or money from another who intends to remain present all the time they are in the manual possession of the prisoner, and the owner has no intention to part with the property, such a person is not a bailee (*r*).

In each of these cases the legal possession of the goods or money remains in the owner, and the person appropriating them is guilty of a common law larceny.

If goods are obtained by fraud from a carrier or a mere

(*k*) *R.* v. *Bunkall* (1864), Le. & Ca. 371; *R.* v. *Aden* (1873), 12 Cox, C. C. 512, C. C. R.

(*l*) *R.* v. *De Banks* (1884), 13 Q. B. D. 29, C. C. R.; *R.* v. *Holloway Prison (Governor), Ex parte George* (1897), 18 Cox, C. C. 631; and see *R.* v. *Richmond* (1873), 12 Cox, C. C. 495, C. C. R.; *R.* v. *Henderson* (1870), 11 Cox, C. C. 593, C. C. R.; *R.* v. *Tonkinson* (1881), 14 Cox, C. C. 603, C. C. R.; *R.* v. *Oxenham* (1876), 13 Cox, C. C. 349, C. C. R.

(*m*) *R.* v. *Hassall* (1861), Le. & Ca. 58; *R.* v. *Hoare* (1859), 1 F. & F. 647, WIGHTMAN, J.; *R.* v. *Garrett* (1860), 2 F. & F. 14.

(*n*) *R.* v. *Jackson* (1864), 9 Cox, C. C. 505, where MARTIN, B., held that a prisoner to whom a coat had been lent for a day, and who was found wearing the coat some days afterwards on a ship bound for Australia, had not converted it within the meaning of the statute; see also *R.* v. *Weekes* (1866), 10 Cox, C. C. 224; *R.* v. *Cosser* (1876), 13 Cox, C. C. 187; *R.* v. *Oxenham* (1876), 13 Cox, C. C. 349, C. C. R.

(*o*) *R.* v. *Murray* (1830), 1 Mood. C. C. 276; *R.* v. *Jones* (1842), Car. & M. 611; *R.* v. *Watts* (1850), 2 Den. 14; *R.* v. *Cooke* (1871), L. R. 1 C. C. R. 295. If a servant receives the property for his master and appropriates it before it comes to the possession of his master, the offence is embezzlement. As to larceny and embezzlement by servants, see pp. 644, 649, *post.*

(*p*) 1 Hale, P. C. 506; 2 East, P. C. 682.

(*q*) *R.* v. *Jones* (1842), Car. & M. 611, CRESSWELL, J.; *R.* v. *Harvey* (1840), 9 C. & P. 353, ALDERSON, B.; *R.* v. *McNamee* (1832), 1 Mood. C. C. 368. But a doubt was expressed in *R.* v. *Hey* (1849), 1 Den. 602, 604, as to whether *R.* v. *McNamee* was rightly decided on the ground that the prisoner in that case was a general drover and not the servant of a particular employer, and was therefore a bailee. The law with reference to larceny by a bailee had not been altered at this date.

(*r*) 2 East, P. C. 683; *R.* v. *Thompson* (1862), 9 Cox, C. C. 244, C. C. R.

custodian, or from the owner's servant who has no general or special authority from his master to sell or to pass the property in the goods, the person so obtaining them is guilty of larceny even though the carrier, custodian, or servant intended or purported to pass the property, for he had no power to do so, both the property and the legal possession remaining in the owner (*s*).

Larceny by a trick.

1280. A taking amounts to larceny if possession is obtained from the owner by trick or by fraud (*t*), the prisoner at the time when he obtains such possession intending to steal the goods, provided that the owner did not intend to part with his entire property in the goods but only with the temporary possession (*a*).

(*s*) *R.* v. *Jackson* (1826), 1 Mood. C. C. 119; *R.* v. *Longstreeth* (1826), 1 Mood. C. C. 137; *R.* v. *Prince* (1868), L. R. 1 C. C. R. 150; *R.* v. *Robins* (1854), Dears. C. C. 418; *R.* v. *Sheppard* (1839), 9 C. & P. 121; *R.* v. *Small* (1837), 8 C. & P. 46; compare *R.* v. *Stewart* (1845), 1 Cox, C. C. 174, 176. The fraudulent conversion of property or the proceeds thereof by a person intrusted with such property, or who has received it for or on account of any other person, is also a statutory misdemeanour (Larceny Act, 1901 (1 Edw. 7, c. 10), s. 1). As this offence does not amount to larceny, it is dealt with at p. 660, *post*. As to a fraudulent conversion by a person intrusted with property under a power of attorney, see Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 77, p. 659, *post*. As to factors or agents fraudulently dealing with property of their principals, see *ibid.*, s. 78, and p. 658, *post*.

(*t*) As to obtaining possession by force or by putting the owner in fear, see p. 661, *post*.

(*a*) 1 Hawk. P. C., c. 33, ss. 14 *et seq.*; *R.* v. *Semple* (1786), 1 Leach, 420, 424; *R.* v. *Campbell* (1827), 1 Mood. C. C. 179; *R.* v. *Gilbert* (1828), 1 Mood. C. C. 185; *R.* v. *Stewart* (1845), 1 Cox, C. C. 174; *R.* v. *Small* (1837), 8 C. & P. 46; *R.* v. *Box* (1839), 9 C. & P. 126; *R.* v. *Cohen* (1851), 2 Den. 249; *R.* v. *Pratt* (1830), 1 Mood. C. C. 250; *R.* v. *Slowly* (1873), 12 Cox, C. C. 269, C. C. R.; *R.* v. *Russett*, [1892] 2 Q. B. 312, C. C. R.; *R.* v. *Buckmaster* (1887), 20 Q. B. D. 182, C. C. R.; *R.* v. *Hollis* (1883), 12 Q. B. D. 25, C. C. R. The cases illustrating the principle enunciated in the text may be classified as follows:—

Possession of goods obtained by a pretended intention to purchase (*R.* v. *Campbell, supra*; *R.* v. *Box, supra*; *R.* v. *Cohen, supra*; *R.* v. *Pratt, supra*; *R.* v. *Gilbert, supra*; *R.* v. *Slowly, supra*; *R.* v. *Savage* (1831), 5 C. & P. 143; *R.* v. *Russett, supra*; *R.* v. *Webb* (1850), 5 Cox, C. C. 154; *R.* v. *Small, supra*; *R.* v. *Sharpless* (1772), 1 Leach, 92).

Possession obtained by a temporary hiring (*R.* v. *Pear* (1779), 1 Leach, 212; *R.* v. *Cole* (1847), 2 Cox, C. C. 340; *R.* v. *Semple, supra*; *R.* v. *Janson* (1849), 4 Cox, C. C. 82; *R.* v. *Brooks* (1838), 8 C. & P. 295).

Possession intrusted for the purposes of sale (*R.* v. *Waller* (1865), 10 Cox, C. C. 360; and see *Oppenheimer* v. *Attenborough*, [1907] 1 K. B. 510; [1908] 1 K. B. 221, C. A.; and *Oppenheimer* v. *Fraser and Wyatt*, [1907] 1 K. B. 519; [1907] 2 K. B. 50, C. A.).

Possession intrusted for inspection (*R.* v. *Rodway* (1841), 9 C. & P. 784), of a bill for the pretended purpose of getting it discounted (*R.* v. *Aickles* (1784), 1 Leach, 294), of bank notes for the purpose of getting or giving change (*R.* v. *Oliver* (1811), cited at 2 Leach, 1072; *R.* v. *Williams* (1834), 6 C. & P. 390; *R.* v. *Johnson* (1851), 2 Den. 310), of money to pay to another person (*R.* v. *Brown* (1856), Dears. C. C. 616).

Possession obtained by personating another person (*R.* v. *Kay* (1857), 7 Cox, C. C. 289, C. C. R.; *R.* v. *Gillings* (1858), 1 F. & F. 36; *R.* v. *Longstreeth* (1826), 1 Mood. C. C. 137).

Possession obtained by "ringing the changes" (*R.* v. *McKale* (1868), L. R. 1 C. C. R. 125; *R.* v. *Hollis* (1883), 12 Q. B. D. 25, C. C. R.; and see *R.* v. *Greenaway* (1908), 72 J. P. 389, C. C. A.).

Cases of "welshing" (*R.* v. *Robson* (1820), Russ. & Ry. 413; *R.* v. *Buckmaster* (1887), 20 Q. B. D. 182, C. C. R.).

"Ring-dropping" (*R.* v. *Patch* (1782), 1 Leach, 238; *R.* v. *Marsh* (1784),

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If money or goods are obtained by a fraudulent trick or pretence, but the owner, being deceived by the pretence, intends to part with his property in the money or goods, the offence is that of obtaining by false pretences, and not larceny (*b*).

Husband and wife.

1281. Every married woman has by statute in her own name against all persons whomsoever, including her husband (subject as regards her husband to the proviso stated below), the same remedies and redress by way of criminal proceedings for the protection and security of her own separate property as if it belonged to her as a *feme sole*, and it is sufficient to allege in the indictment that the property is her property (*c*).

A husband may be indicted for stealing the goods of his wife, provided that no criminal proceeding can be taken by any wife against her husband while they are living together in respect of any property claimed by her, nor, while they are living apart, with regard to any act done by the husband, while they were living together, concerning property claimed by her, unless such property has been wrongfully taken by the husband when leaving or deserting or about to leave or desert his wife (*d*).

Similarly a wife is punishable criminally for stealing the goods of her husband. A wife doing any act with respect to any property of her husband which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under the Married Women's Property Act, 1882 (*e*), is in like manner liable to criminal proceedings by her husband (*f*).

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1 Leach, 345; *R.* v. *Moore* (1784), 1 Leach, 314; *R.* v. *Watson* (1794), 2 Leach, 640.

Possession obtained from a servant having no general authority, or no power to pass the property (*R.* v. *Robins* (1854), 6 Cox, C. C. 420, C. C. R.; *R.* v. *Wilkins* (1789), 1 Leach, 520; *R.* v. *Stear* (1848), 1 Den. 349; *R.* v. *Sheppard* (1839), 9 C. & P. 121; *R.* v. *Little* (1867), 10 Cox, C. C. 559, in which case, a carman having delivered goods by mistake to the prisoner, it was held that the latter might be convicted of larceny by fraudulently appropriating them; *R.* v. *Longstreeth* (1826), 1 Mood. C. C. 137; *R.* v. *Webb* (1850), 5 Cox, C. C. 154; *R.* v. *Small* (1837), 8 C. & P. 46).

(*b*) *R.* v. *Solomons* (1890), 17 Cox, C. C. 93, C. C. R.; *R.* v. *Wilson* (1837), 8 C. & P. 111; *R.* v. *Carter* (1883), 47 J. P. 759, C. C. R.; *R.* v. *Colman* (1785), 1 Leach, 303, n.; *R.* v. *Harvey* (1787), 1 Leach, 467; *R.* v. *Barnes* (1850), 2 Den. 59; *White* v. *Garden* (1851), 10 C. B. 919, 927. This rule applies, where goods are obtained by the forged or pretended order of a customer (*R.* v. *Adams* (1844), 1 Den. 38; *R.* v. *Atkinson* (1799), 2 East, P. C. 673), or where any credit is given to the prisoner or payment made on account by him, though by a cheque which is dishonoured (*R.* v. *Parkes* (1794), 2 Leach, 614; *R.* v. *North* (1861), 8 Cox, C. C. 433; *R.* v. *Harvey*, *supra*). If there is either an agreement, or a custom of the particular trade, that goods sold shall be paid for on delivery, and the prisoner fraudulently obtains possession without making the payment, it is larceny (*R.* v. *Gilbert* (1828), 1 Mood. C. C. 185; *R.* v. *Harvey*, *supra*; and see the cases cited in note (*a*), p. 633, *ante*.

(*c*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 12. As to the effect of ss. 12 and 16 of this Act in the case of receiving goods stolen by the husband from the wife, or *vice versâ*, see p. 683, and title HUSBAND AND WIFE. As to laying the property in the wife, see *R.* v. *Murray*, [1906] 2 K. B. 385, C. C. R.

(*d*) *Ibid.*, s. 12.

(*e*) 45 & 46 Vict. c. 75.

(*f*) *Ibid.*, s. 16. The above-mentioned proviso in s. 12 applies equally to

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Larceny by partner or joint owner.

1282. If any person, being a member of a partnership or one of two or more beneficial owners (*g*) of any money, goods, or other property, steals or embezzles such property, he is by statute (*h*) liable to be tried, convicted, and punished for the same as if he had not been a member of the partnership or one of such beneficial owners.

Persons are joint beneficial owners within the meaning of the statute constituting this offence, if they form an association for an object which is not criminal, although by reason of non-compliance with statutory regulations the association does not constitute a legal entity (*i*).

Any person is a joint beneficial owner for this purpose who has an interest of any kind in the proper disposition or distribution of the property other than that of a mere trustee or agent (*k*).

Larceny of goods not in the possession of owner.

1283. A man may be convicted of stealing his own goods, if such goods are in the possession of his bailee and the intention of the accused is either fraudulently to charge the bailee with the loss of the goods or, in cases where the bailee has a right to possession as against the accused, to deprive the bailee of his special property in the goods (*l*).

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the case of the taking by a wife of the goods of her husband (*R.* v. *James*, [1902] 1 K. B. 540, 543, C. C. R.); the indictment need not in either case allege that the conditions in the proviso exist, nor need the prosecution prove affirmatively that they do exist in the absence of any evidence offered by the defendant of facts which would establish a defence under the proviso (*ibid.*). At common law the wife could not steal the husband's goods, whether she had committed adultery or not; a person acting in concert with her, if she had not committed adultery, could not at common law be convicted of larceny of her husband's goods; but where an adulterer, acting in concert with the wife, knowingly took the husband's goods, he was held guilty of larceny, the effect of the adultery being to revoke the wife's authority to dispose of her husband's goods (*R.* v. *Kenny* (1877), 2 Q. B. D. 307; *R.* v. *Featherstone* (1854), 23 L. J. (M. C.) 127, C. C. R.; *R.* v. *Berry* (1859), Bell, C. C. 95; *R.* v. *Deer* (1862), 32 L. J. (M. C.) 33, C. C. R.).

(*g*) As to trustees, see p. 658, *post*.

(*h*) Larceny Act, 1868 (31 & 32 Vict. c. 116), s. 1. As to frauds and other crimes committed by members of certain banking co-partnerships within the meaning of the Joint Stock Banks Act, 1838 (1 & 2 Vict. c. 96), or formed under the Bank of England Act, 1833 (3 & 4 Will. 4, c. 98), see the Joint Stock Companies Act, 1840 (3 & 4 Vict. c. 111), s. 2. At common law it was not a criminal offence for one co-owner of goods fraudulently to deprive the other co-owners of them, such co-owner being lawfully in possession (1 Hale, P. C. 513); but if he took them from a person who was a bailee for all the co-owners, he could be convicted of larceny (*R.* v. *Bramley* (1822), Russ. & Ry. 478), even though the bailee were himself one of the co-owners (*R.* v. *Webster* (1861), Le. & Ca. 77, and this is still the law in any case which cannot be brought within the Larceny Act, 1868 (31 & 32 Vict. c. 116).

(*i*) *R.* v. *Tankard*, [1894] 1 Q. B. 548, C. C. R. A society which is not formed for the acquisition of gain is not a co-partnership within the meaning of the section (*R.* v. *Robson* (1885), 16 Q. B. D. 137, C. C. R.); but if, in that case, the prisoner had been indicted in a second count as one of several joint beneficial owners, the conviction could have been upheld; see *R.* v. *Tankard*, *supra*; *R.* v. *Neat* (1899), 19 Cox, C. C. 424, C. C. R.

(*k*) *R.* v. *Neat*, *supra*.

(*l*) 4 Just. Inst. tit. 1, s. 10; 1 Hale, P. C. 513; 1 Hawk. P. C., c. 33, s. 47; *Stafford* v. *Pooler* (1594), Cro. Eliz. 536; *R.* v. *Wilkinson* (1821), Russ. & Ry. 470; *R.* v. *Bramley* (1822), Russ. & Ry. 478; *R.* v. *Wadsworth* (1867), 10

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Goods delivered by mistake.

1284. If, by a mistake of the owner, property is delivered to a person to a greater amount than he is entitled to receive, and such person, at the time when he receives it, is aware of the mistake and fraudulently appropriates such property, he is guilty of larceny although he did nothing to cause the mistake (*m*).

If the person accepting the delivery is ignorant of the mistake at the time of delivery, but upon afterwards discovering it fraudulently appropriates the property, it is uncertain whether or not he is guilty of larceny (*n*).

The taking.

1285. The taking must be against the will of the owner of the property. But where, with the view of arresting a suspected thief, facilities are intentionally afforded to him for obtaining access to property and he avails himself of such facilities and takes such property, the taking amounts to larceny (*o*).

(iii.) *Subjects of Larceny.*

Value.

1286. An article, to be the subject of larceny, must be of some appreciable value (*p*), but it need not be of the value of any known coin (*q*), and it is sufficient, if it is of value only to the prosecutor (*r*).

At common law, money and all personal chattels in possession, which are by law the subject of property and which are of any definite value, can be the subjects of larceny.

Statutory larceny.

1287. There are many things which could not have been the subject of larceny at common law but have by statute been made the subject of larceny.

Land.

1288. Land could not at common law, and cannot now, be the subject of larceny (*s*).

Cox, C. C. 557. According to some of the judges in *R.* v. *Wilkinson* (1821), Russ. & Ry. 470, it is larceny in such a case, even though the intent is to defraud not the bailee but some third person. As to stealing goods in the custody of a sheriff, see *R.* v. *Knight* (1908), 73 J. P. 15, C. C. A.

(*m*) *R.* v. *Middleton* (1873), L. R. 2 C. C. R. 38; *R.* v. *Flowers* (1886), 16 Q. B. D. 643, C. C. R.

(*n*) *R.* v. *Ashwell* (1885), 16 Q. B. D. 190, C. C. R., where fourteen judges were equally divided; but in *R.* v. *Flowers*, *supra*, Lord COLERIDGE, C.J., MANISTY, J., and HAWKINS, J., stated that in *R.* v. *Ashwell* none of the judges intended to question the ancient doctrine that an innocent receipt of a chattel and its subsequent fraudulent appropriation do not constitute larceny; see also *R.* v. *Mucklow* (1827), 1 Mood. C. C. 160; *R.* v. *Davies* (1856), Dears. C. C. 640; *Cartwright* v. *Green* (1803), 8 Ves. 405; *Merry* v. *Green* (1841), 7 M. & W. 623; *R.* v. *Riley* (1853), Dears. C. C. 149 (where, however, possession was obtained by a trespass, though an innocent one); Stephen, Digest of the Criminal Law, 5th ed., 261.

(*o*) *R.* v. *Norden* (undated), Fost. 129; *R.* v. *Egginton* (1801), 2 Leach, 913; *R.* v. *Williams* (1843), 1 Car. & Kir. 195; but as to such attempts to entrap a receiver, see p. 679, note (*z*), *post*.

(*p*) Formerly it appears to have been held that this value must be intrinsic, and not from the relation which the chattel bore to some other thing as in the case of deeds, covenants, and other securities for debts (1 Hawk. P. C., c. 33, s. 35; *R.* v. *Westbeer* (1740), 2 Stra. 1133); but see now the cases mentioned in the following note in which the articles stolen were pieces of paper of no real intrinsic value.

(*q*) *R.* v. *Bingley* (1833), 5 C. & P. 602, GURNEY, B.; *R.* v. *Morris* (1840), 9 C. & P. 349, PARKE, B.

(*r*) *R.* v. *Clarke* (1810), 2 Leach, 1036, 1039.

(*s*) 1 Hale, P. C. 510. As to the definition of "property" in the Larceny Act, 1861, see *ibid.*, s. 1, and note (*a*), p. 684, *post*.

Deeds.

At common law neither deeds relating to land (*t*) nor the chest in which they are kept (*a*) can be the subject of larceny, as they savour of the realty and descend to the heir-at-law. But now anyone is by statute (*b*) guilty of a felony who steals or for any fraudulent purpose destroys, cancels, obliterates or conceals the whole or any part of any document of title to lands (*c*).

The punishment for this offence is penal servitude for not more than five or for not less than three years, or imprisonment with or without hard labour for not more than two years (*d*).

Larceny of trees etc.

1289. Trees, growing crops, fruit, and similar vegetable produce are not, while they are still annexed to the land, the subjects of larceny; but it is larceny at common law to take them after they have been severed from the land either by the owner or by any other person, even the thief himself, provided, in the case of the thief, that the severance and the taking are not one continuous act (*e*).

By statute (*f*) everyone is guilty of felony who steals, or cuts, breaks, roots up, or otherwise destroys or damages with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood respectively growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, in case the value of the article stolen or the amount of injury done exceeds £1.

(*t*) 1 Hale, P. C. 510; *R.* v. *Westbeer* (1740), 2 Stra. 1133.

(*a*) 3 Co. Inst. 109.

(*b*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 28; see also s. 27, and the definition of "valuable security" in s. 1, p. 642, *post*. It is sufficient for the indictment to allege that the document is or contains evidence of the title of a person having an interest vested or contingent, legal or equitable, in the real estate to which it relates, and to mention such real estate or some part thereof (*ibid.*). The words "document of title to lands" include any deed, map, paper, or parchment, written or printed, being or containing evidence of the title or any part of the title to any interest in or out of any real estate (*ibid.*, *s.* 1). The accused cannot be convicted if he has at any time previously to his being charged with such offence first disclosed such act or offence on oath in consequence of any compulsory powers of any court in any action instituted by a party aggrieved, or if he has first disclosed such act in any compulsory examination or deposition before any court upon the hearing of any matter in bankruptcy (*ibid.*, s. 29); see p. 643, *post*, where the terms of this protection are more fully stated. The taking of title deeds must be such a taking as would in the case of an ordinary chattel amount to larceny (*R.* v. *John* (1835), 7 C. & P. 324).

(*c*) The fraudulent purpose should be stated in the indictment (*R.* v. *Morris* (1839), 9 C. & P. 89, ALDERSON, B.).

(*d*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 28; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*e*) 1 Hale, P. C. 510; 1 Hawk. P. C., c. 33, s. 21; *Lee* v. *Risdon* (1816), 7 Taunt. 188, 191. It is for the jury to say whether or not the severance and the subsequent taking constituted one continuous act, and if they find that the prisoner severed the tree or other growth with intent afterwards to steal it, but that, being interrupted, he went away and then returned and took it away without ever intending to abandon his possession of it, he cannot be convicted of larceny at common law (see *R.* v. *Townley* (1871), L. R. 1 C. C. R. 315, 320). That case had reference to the larceny of dead wild rabbits, but as regards vegetable produce the subject-matter is so fully covered by statute that the question is not now likely to arise.

(*f*) Larceny Act, 1861 (24 & 25 Vict. c. 96) s. 32.

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The punishment for this offence is the same as in the case of simple larceny (*g*).

Anyone who steals etc. a tree etc. growing elsewhere than in the before-mentioned situations, if the value of the tree etc. or the amount of injury exceeds £5, is guilty of felony and is liable to the same punishment as in the case of simple larceny (*h*).

If either the value of the tree etc. wherever it may have been growing, or the injury done, exceeds one shilling but does not amount to £5, the offender is punishable for a first and second offence upon summary conviction (*i*). Everyone is by statute (*k*) guilty of a felony who, having been twice summarily convicted of this offence, commits such offence a third or subsequent time. The punishment is the same as in the case of simple larceny (*l*).

Larceny of plants etc.

1290. Everyone who steals, or destroys or damages with intent to steal, any plant, root, fruit, or vegetable production growing in any garden, orchard, pleasure-ground, nursery-ground, or greenhouse, is liable on summary conviction to imprisonment with or without hard labour for not more than six months, or to pay over and above the value of the article stolen or the amount of the damage done a sum not exceeding £20 (*m*). A person who commits a second offence of this kind is guilty of felony and punishable in the same manner as in the case of simple larceny (*n*).

Larceny of ore or coal from mines.

1291. To take ore or coal from mines is not larceny at common law; but everyone is by statute (*o*) guilty of felony who steals, or severs with intent to steal, the ore of any metal, or any lapis calaminaris (*p*), manganese or mundick, or any wad, black cawke (*a*), or black lead, or any coal or cannel coal from any mine, bed or vein thereof.

This offence is punishable by imprisonment with or without hard labour for not more than two years (*b*).

(*g*) As to which, see p. 627, *ante*.

(*h*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 32. As to the punishment for simple larceny see p. 627, *ante*. In cases of this kind where several trees etc. have been stolen or injured with that intent at one and the same time so that the taking was a continuous act, the value of or the damage done to the different trees may be added together to make up the amounts mentioned in the section (*R.* v. *Shepherd* (1868), L. R. 1 C. C. R. 118).

(*i*) See title MAGISTRATES.

(*k*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 33.

(*l*) *Ibid.*

(*m*) *Ibid.*, s. 36. Stealing any part of a live or dead fence, rail, stile, or gate is punishable on summary conviction only (*ibid.*, ss. 34, 35). Fruit trees are not plants or vegetable productions within the meaning of s. 36 (*R.* v. *Hodges* (1829), Mood. & M. 341). Stealing cultivated roots or plants used for the food of man or beast, or for medicinal, distilling, dyeing, or manufacturing purposes, and growing in land which is not a garden etc., is punishable on summary conviction (s. 37).

(*n*) *Ibid.*, s. 36. As to the punishment of simple larceny, see p. 627, *ante*.

(*o*) *Ibid.*, s. 38.

(*p*) *I.e.*, calamine or ore of zinc.

(*a*) "Cawke" is sulphate of barytes; "wad" is a local name for plumbago.

(*b*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 38. Where mining has been carried on by a lessee from one shaft, and ore or coal has been taken by him illicitly from a number of different adjacent owners, the taking extending over

Any person employed in or about any mine is by statute (*c*) guilty of felony who takes, removes, or conceals any ore of any metal, or any mineral, found or being in such mine, with intent to defraud any proprietor of, or adventurer in such mine, or any workman or miner employed therein.

The punishment is imprisonment with or without hard labour for not more than two years (*d*).

Larceny of fixtures.

1292. Fixtures were not the subject of larceny at common law (*e*). Anyone is by statute (*f*) guilty of a felony who steals, rips, cuts, severs, or breaks, with intent to steal, (1) any glass or woodwork belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or of other material or of both, fixed in or to any building whatsoever; or (2) any thing made of metal fixed in any land being private property, or for a fence to any dwelling-house, garden or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground. The punishment is the same as in the case of simple larceny (*g*).

Upon the trial of an indictment for the statutory offence it must be shown that the prisoner was a party to the actual severance of the fixture. If he stole it after the severance, he cannot be convicted either of the statutory offence or of simple larceny upon an indictment for the statutory offence (*h*).

Larceny by tenants.

1293. Everyone is by statute (*i*) guilty of felony who steals any chattel or fixture let to be used by him in or with any house or lodging, whether the contract has been made by him or by any person on his behalf.

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a considerable period of time, evidence as to the taking from all the adjoining owners is admissible to prove the prisoner's knowledge that he has gone out of his boundary in the particular case which is the subject of investigation (*R.* v. *Bleasdale* (1848), 2 Car. & Kir. 765), and it would appear that in such a case the indictment may allege a stealing from all the different owners, and that the prosecution will not be called upon to allege upon which taking they will proceed (*ibid.*).

(*c*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 39.

(*d*) *Ibid.*

(*e*) But articles, such as window sashes, not permanently fixed but secured temporarily in their places by laths nailed across them, were not regarded as fixtures within this rule (*R.* v. *Hedges* (1779), 1 Leach, 201).

(*f*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 31. In the case of a fixture in a square, street, or place for public use or ornament the indictment need not allege that it is the property of any person (*ibid.*). A cartshed is a "building" within the meaning of the section (*R.* v. *Worrall* (1836), 7 C. & P. 516, LITTLEDALE, J.); the indictment need not allege that the erection to which the fixture was fastened was a "building" if the evidence shows it to have been such (*R.* v. *Rice* (1859), Bell, C. C. 87). As to what is a dwelling-house within the meaning of the section, and evidence of the ownership of it, see *R.* v. *Brummitt* (1861), Le. & Ca. 9; *R.* v. *Finch* (1834), 1 Mood. C. C. 418. Metal fixed on a post let into the ground is "metal fixed in land" (*R.* v. *Jones* (1858), Dears. & B. 555). See also *R.* v. *Cooper* (1908), 24 T. L. R. 867, C. C. A.

(*g*) As to the punishment of simple larceny, see p. 627, *ante*.

(*h*) *R.* v. *Gooch* (1838), 8 C. & P. 293.

(*i*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 74. The tenant being in lawful possession was not guilty of larceny at common law, if he appropriated either a

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The punishment for this offence is imprisonment with or without hard labour for not more than two years, and if the offender is a male under the age of sixteen years, he may be sentenced to a whipping. In case the value of the chattel or fixture exceeds £5, the offender may be sentenced to penal servitude for seven years (*k*).

If the article alleged to have been stolen is a chattel, the indictment may be in the common form as for larceny; if it is a fixture, the indictment may be in the same form as if the accused were not a tenant or lodger; and in either case the property may be laid in the owner or person letting to hire (*k*).

Larceny of articles in which no person has any determinate property.

1294. Articles in which by law no person has any determinate property are not the subject of larceny, either at common law or by statute. A corpse cannot be stolen (*l*), but a larceny may be committed in respect of the shroud (*m*) or of the coffin (*n*). The taking of treasure trove does not amount to larceny (*o*). A wreck, waif or stray, before it has been seized by the person entitled to it, is not the subject of larceny at common law (*p*). But by statute (*q*) anyone is guilty of a felony who plunders or steals any part of such a ship or wreck or any goods or articles belonging thereto.

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fixture or a chattel belonging to the landlord and let to be used with the premises (*R.* v. *Meeres* (1689), 1 Show. 51), unless he had procured his tenancy with a fraudulent intention to steal (*R.* v. *Munday* (1799), 2 Leach, 850; 2 East, P. C. 594).

(*k*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 74.

(*l*) As to offences in connection with dead bodies, see p. 552, *ante*, and title BURIAL AND CREMATION, Vol. III., p. 401.

(*m*) *Haynes's Case* (1614), 12 Co. Rep. 113.

(*n*) 2 East, P. C. 652. The property in these articles must be laid in the legal personal representatives of the deceased, or, if their names cannot be ascertained, they may be alleged to be the property of a person unknown (*ibid.*; see, however, *R.* v. *Garlick* (1843), 1 Cox, C. C. 52); if there are no legal personal representatives of the deceased, the property may, it seems, be laid in the President of the Probate, Divorce, and Admiralty Division of the High Court of Justice (see Court of Probate Act, 1858 (21 & 22 Vict. c. 95), s. 19; Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 34).

(*o*) As to concealment of treasure trove, see p. 521, *ante*.

(*p*) 1 Hawk. P. C., c. 33, s. 24.

(*q*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 64. A person who finds or takes possession of wreck within the limits of the United Kingdom, or brought within those limits if found outside them (Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), s. 72), or of any cargo or other articles from the wreck which are found on shore, is bound to give notice to the receiver of wrecks of the district, and if he is not the owner to deliver up the same to him. If he does not do so, he is liable to a fine of £100, and he also forfeits all claim to salvage and is liable to pay to the owner double the value of the wreck (Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 518, 519); see *The Zeta* (1875), L. R. 4 A. & E. 460; *The Liffey* (1887), 6 Asp. M. L. C. 255. A person who refuses without reasonable cause to assist a receiver of wreck in the preservation of shipwrecked persons, or of the vessel, cargo, or apparel, when required by him so to assist, or refuses the use of any cart or horses near at hand, is liable to a fine of £100, and the same fine is imposed upon the owner or occupier of any land who impedes persons attempting to save persons or cargo from a wreck in passing over his adjoining land (unless there is a public road equally convenient) or in depositing the cargo on such land for a reasonable time (Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 512, 513). A receiver of wreck is entitled to use force for the prevention of plundering, disorder, or obstruction, and may cause any offender to be apprehended (*ibid.*, s. 514).

The punishment for this offence is penal servitude for not more than fourteen years or for not less than three years, or imprisonment with or without hard labour for not more than two years (*r*).

Taking wreck into foreign port.

1295. Any person is by statute (*s*) guilty of felony who takes into any foreign port any vessel stranded, derelict, or otherwise in distress found on or near the coasts of the United Kingdom, or on any tidal water within the limits of the United Kingdom, or any part of the cargo or apparel thereof, or any wreck found within those limits, and then sells the same.

The punishment is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (*t*).

1296. If goods are definitely and intentionally abandoned by the owner, they become the property of the first person who appropriates them, and until they have been so appropriated they cannot be stolen (*u*).

Animals *feræ naturæ*.

Animals *feræ naturæ*, so long as they are alive and have not been reclaimed, are not at common law the subject of larceny, but when they become the property of any person, they are capable of being stolen (*x*).

Choses in action.

Choses in action are not the subject of larceny (*y*). Documents which are the evidence of such rights and the means of reducing them into possession are not the subject of larceny at common law (*z*). But such documents, if they constitute valuable securities, are by statute the subject of larceny.

Larceny of valuable security.

Everyone who steals, or for any fraudulent purpose destroys, cancels, or obliterates the whole or any part of any valuable security other than a document of title to lands (*a*) is by statute guilty of felony of the same nature and in the same degree and punishable

(*r*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 64; Penal Servitude Act, 1891, (54 & 55 Vict. c. 69), s. 1.

(*s*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 535.

(*t*) *Ibid.*

(*u*) See *R.* v. *Edwards* (1877), 13 Cox, C. C. 384, C. C. R., where, diseased pigs having been buried by the owner's orders, and the prisoners having dug up and taken the carcases away, the jury convicted them of larceny, and the court affirmed the conviction.

(*x*) As to how property may be acquired in animals *feræ naturæ*, see title ANIMALS, Vol. I., pp. 365 *et seq.* See also the provisions of the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 21, with reference to stealing domestic animals and birds, *ibid.*, p. 368; and as to the larceny of wild animals which have been killed or reclaimed, *ibid.*, p. 370. Fish in a tank or net or any inclosed place where the owner could take them at his will were the subject of larceny at common law (2 East, P. C. 610); the taking of fish in water running through or being in any land adjoining or belonging to the dwelling-house of any person being the owner of such water or having a right of fishery therein is a statutory misdemeanour punishable on summary conviction (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 24). As to stealing pheasants' eggs, see *R.* v. *Stride*, [1908] 1 K. B. 617, C. C. R.

(*y*) By a chose in action is meant a mere abstract or incorporeal right to a thing; see title CHOSE IN ACTION, Vol. IV., p. 360.

(*z*) This was said to be on the ground that such documents are of no intrinsic value and do not import any property in possession of the person from whom they are taken (1 Hawk. P. C., c. 33, s. 22; 2 East, P. C. 597).

(*a*) As to which see p. 637, *ante*.

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in the same manner as if he had stolen any chattel of like value with the share, interest, or deposit to which the security so stolen may relate, or with the money due on the security so stolen or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing represented by, mentioned in, or referred to in the security (*b*).

Definition of "valuable security."

The term "valuable security" includes any order, Exchequer acquittance, or other security entitling to or evidencing the title of any person to any share or interest in any public stock or fund of the United Kingdom or of any foreign State, or in any fund of any body corporate, company or society within the kingdom or abroad, or to any deposit in any bank, and also includes any debenture, deed, bond, bill, note, warrant, order or other security whatsoever for money or for payment of money, either English or foreign, and any document of title to lands or goods (*c*).

Definition of "document of title to goods."

The term "document of title to goods" includes any bill of lading, India warrant, dock warrant, warehouse keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought and sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or delivery, the possessor of such document to transfer or receive any goods therein mentioned or referred to (*d*).

Larceny of will etc.

1297. Everyone is by statute (*e*) guilty of felony who, either during the life of a testator or after his death, steals, or for any fraudulent purpose destroys, cancels, obliterates (*f*) or conceals the whole or any part of any will or codicil or other testamentary instrument.

(*b*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 27.

(*c*) *Ibid.*, s. 1. The following have been held to be documents of the kind mentioned in the above definition of a "valuable security":—Transfer of shares (*R.* v. *Smith* (1898), 62 J. P. 231); bills accepted but not signed by the drawer, the prisoner himself being intended to be the drawer (*R.* v. *Bowerman*, [1891] 1 Q. B. 112, C. C. R.; compare *R.* v. *Hart* (1833), 6 C. & P. 106); scrip certificates of a foreign railway company (*R.* v. *Smith* (1855), Dears. C. C. 561); post office orders (*R.* v. *Gilchrist* (1841), 2 Mood. C. C. 233, C. C. R.); postal notes or orders (see Post Office Act, 1908 (8 Edw. 7, c. 48), s. 59 (1)); a pawnbroker's ticket, as being a warrant for the delivery of goods (*R.* v. *Morrison* (1859), Bell, C. C. 158); any agreement to pay money, if founded on a valuable consideration appearing on the face of it (*R.* v. *John* (1875), 13 Cox, C. C. 100). The following have been held not to be such documents:—Re-issuable notes, after they have been paid and before they have been re-issued (*R.* v. *Clark* (1810), Russ. & Ry. 181; see, however, *R.* v. *Ranson* (1812), Russ. & Ry. 232; an unstamped cheque (*R.* v. *Yates* (1827), 1 Mood. C. C. 170; *R.* v. *Pooley* (1800), Russ. & Ry. 12); but in such cases as these the document may be described in the indictment as a piece of paper; see *R.* v. *Perry* (1845), 1 Den. 69; *R.* v. *Vyse* (1829), 1 Mood. C. C. 218); see further, as to what amounts to a warrant or order for the payment of money under the Forgery Act, 1861 (24 & 25 Vict. c. 98), p. 719, *post*. As to larceny of documents of title to lands, see p. 637, *ante*.

(*d*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 1.

(*e*) *Ibid.*, s. 29. In an indictment for this offence it is nor necessary to allege that the will etc. is the property of any person (*ibid.*). As to deeds etc. relating to real property, see p. 637, *ante*.

(*f*) As to the forging of wills, see Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 21, p. 734, *post*.

The punishment is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*g*).

No person may be convicted either of this offence, or of stealing or for any fraudulent purpose destroying, cancelling, obliterating or concealing any document of title to lands, by any evidence whatever, in respect of any act done by him, if he shall at any time previously to his being charged with such offence have first disclosed such act on oath in consequence of the compulsory process of a court in any action or proceeding *bonâ fide* instituted by any party aggrieved, or in any compulsory examination or deposition before any court upon the hearing of any matter in bankruptcy (*h*).

Larceny of records.

1298. Everyone is by statute (*i*) guilty of felony who steals, or for any fraudulent purpose takes (*k*) from its place of deposit for the time being, or from any person having its lawful custody, or unlawfully and maliciously cancels, obliterates, injures, or destroys the whole or any part of any record, writ, return, panel, process, affidavit, rule, order, warrant of attorney, or any original document of or belonging to any court of record, or relating to any matter, civil or criminal, begun, depending, or terminated in any such court, or any original document relating to the business of any office or employment under His Majesty and being in any office appertaining to any court of justice or in any of the King's castles, palaces or houses, or in any Government or public office.

The punishment for this offence is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (*l*).

Larceny of water.

1299. Water in a pond or running in a channel is, it seems, not the subject of larceny. Water supplied by a water company to its consumers by pipes at a fixed price is the subject of larceny (*m*).

Larceny of gas.

1300. Gas is the subject of larceny if it is fraudulently taken from the pipes of the undertakers (*n*). If the taking has been continuous over any period of time the whole quantity abstracted may be alleged in one indictment as having been taken on one day (*o*).

(*g*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 29. Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*h*) *Ibid.* As to the meaning of "first disclosed," see *R.* v. *Gunnell* (1886), 16 Cox, C. C. 154, C. C. R., cited in note (*b*) on p. 657, *post*; and see note (*b*) on p. 637, *ante*.

(*i*) *Ibid.*, s. 30.

(*k*) The fraudulent purpose need not be to defraud any person by using the document; an intention to defeat the execution of process is sufficient (*R.* v. *Bailey* (1872), L. R. 1 C. C. R. 347).

(*l*) *Ibid.*, s. 30; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The indictment need not allege that the document is the property of any person.

(*m*) *Ferens* v. *O'Brien* (1883), 11 Q. B. D. 21; see title WATER SUPPLY.

(*n*) *R.* v. *White* (1853), Dears. C. C. 203. This is an indictable larceny, even though pecuniary penalties are provided by the Gas Works Clauses Act, 1847 (10 & 11 Vict. c. 15), s. 18; see title GAS.

(*o*) *R.* v. *Firth* (1869), L. R. 1 C. C. R. 172.

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Electricity.

1301. Everyone is by statute (*p*) guilty of simple larceny who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses, any electricity.

Larceny of yarn etc.

1302. Everyone is by statute (*q*) guilty of felony who steals to the value of 10*s.* any woollen, linen, hempen, or cotton yarn, or any article of silk, woollen, linen, cotton, alpaca, or mohair, which is placed or exposed during any process of manufacture in any building, field, or other place.

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*r*).

Larceny by clerk or servant.

1303. Any person is by statute (*s*) guilty of felony who, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, steals any chattel, money, or valuable security belonging to or in the possession or power of his master or employer.

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years, and, if the offender is a male under the age of sixteen years, he may be sentenced to be whipped (*t*).

Larceny by public servant.

1304. Everyone is by statute (*u*) guilty of felony who, being employed in the public service of the Crown, or being a constable or other person employed in the police, steals any chattel, money, or valuable security belonging to or in the possession or power of His Majesty, or intrusted to or received or taken into possession by him by virtue of his employment.

The punishment for this offence is penal servitude for fourteen years (*v*).

It is not necessary to prove the prisoner's appointment to the office, it is sufficient to show that he has acted in it (*w*).

Stealing from Post Office.

1305. Everyone is by statute (*x*) guilty of felony who (1) steals a mail bag, or (2) steals from a mail bag or from a post office or

(*p*) Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 23; see title ELECTRIC LIGHTING.

(*q*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 62. The state or process of manufacture is not complete until the articles are in a marketable condition (*R.* v. *Woodhead* (1836), 1 Mood. & R. 549).

(*r*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 62; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*s*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 67.

(*t*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. See as to collusive sale by servant of his master's property, *R.* v. *Hornby* (1844), 1 Car. & Kir. 305; *R.* v. *Tideswell*, [1905] 2 K. B. 273, C. C. R. As to a gift by a servant of his master's property, see *R.* v. *White* (1840), 9 C. & P. 344, ERSKINE, J. As to larcenies and embezzlements by servants, see p. 649, *post.*

(*u*) *Ibid.*, s. 69.

(*v*) *Ibid.*

(*w*) *R.* v. *Borrett* (1833), 6 C. & P. 124. An under bailiff appointed by the high bailiff of a county court is not a public servant within the meaning of this section, but must be indicted as the servant of the high bailiff (*R.* v. *Parsons* (1888), 16 Cox, C. C. 498).

(*x*) Post Office Act, 1908 (8 Edw. 7, c. 48), s. 50.

from an officer of the Post Office, or from a mail, any postal packet in course of transmission by post, or (3) steals any chattel or money or valuable security out of a postal packet in course of transmission by post, or (4) stops a mail with intent to rob or search the mail.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*y*).

Everyone is by statute (*z*) guilty of felony who unlawfully takes away or opens a mail bag sent by any vessel employed by or under the Post Office for the transmission of postal packets by contract or unlawfully takes a postal packet in course of transmission by post out of a mail bag so sent.

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*a*).

Everyone is by statute (*b*) guilty of felony who, being an officer of the Post Office, steals or embezzles, secretes or destroys, a postal packet in course of transmission by post.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years; if the postal packet stolen contains any chattel, or money, or valuable security, the offender is liable to be sentenced to penal servitude for life (*c*).

(iv.) *Indictment and Evidence.*

1306. An indictment for larceny must allege that the defendant feloniously did "steal, take, and carry away" the particular thing (*d*) alleged to have been stolen, and that such thing was the property of some named or unnamed person. Indictment.

(*y*) Post Office Act, 1908 (8 Edw. 7, c. 48), s. 50; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*z*) Post Office Act, 1908 (9 Edw. c. 7, c. 48), s. 51.

(*a*) *Ibid.*; Penal Servitude Act, 1891, *supra*.

(*b*) Post Office Act, 1908, *supra*, s. 55.

(*c*) *Ibid.*; Penal Servitude Act, 1891, *supra*.

(*d*) *R.* v. *Jones* (1838), 8 C. & P. 288. But see *R.* v. *Tideswell*, [1905] 2 K. B. 273, C. C. R. A mistake in the description of the owner of property may be amended, but, if it is not amended, or if the averment of ownership is omitted altogether, the indictment is bad; see *R.* v. *Ward* (1857), 7 Cox, C. C. 421, C. C. R. (Ir.); *R.* v. *Murray*, [1906] 2 K. B. 385, C. C. R. If the owner of the property is unknown, the indictment should describe the property as belonging to a person to the jurors unknown. If goods formerly belonging to a deceased person are stolen after his death they must be described as the property of the executor of the deceased, if he left a will, or if he died intestate, and no letters of administration have been granted, as the property of the President of the Probate, Divorce and Admiralty Division of the High Court of Justice (Court of Probate Act, 1858 (21 & 22 Vict. c. 95), s. 19; and see Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 34), or, if letters of administration have been granted, of the administrator (see *Tharpe* v. *Stallwood* (1843), 5 Man. & G. 760; Archbold, Criminal Pleading, 23rd ed., 58). If the goods stolen were bailed at the time of the theft, and a third person steals them, the property may be laid either in the bailor or the bailee (*R.* v. *Todd* (1711), 1 Leach, 357, n.; *R.* v. *Packer* (1714), 1 Leach, 357, n.; *R.* v. *Statham* (1773), cited at 1 Leach, 357; *R.* v. *Taylor* (1785), 1 Leach, 356; *R.* v. *Woodward* (1796), 2 East, P. C. 653; *R.* v. *Deakin* (1800), 2 East, P. C. 653; *R.* v. *Remnant* (1807), Russ. & Ry. 136; *R.* v. *Bird* (1839), 9 C. & P. 44; *R.* v.

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Rowe (1859), Bell, C. C. 93). Anyone who has possession, actual or constructive, of the chattels may be alleged as the owner (*R.* v. *Rowe, supra*; *R.* v. *Wymer* (1830), 4 C. & P. 391; *R.* v. *Cain* (1841), Car. & M. 309; refer also to *R.* v. *Stride*, [1908] 1 K. B. 617). A bailee who has parted by mistake with the possession of a chattel is still the owner, and may be so described (*R.* v. *Vincent* (1852), 2 Den. 464). Goods cannot be laid as in the ownership of a servant who has the bare charge only of them (*R.* v. *Hutchinson* (1820), Russ. & Ry. 412; *R.* v. *Green* (1856), Dears. & B. 113); but see *R.* v. *Rudick* (1838), 8 C. & P. 237). If a servant or other person has the possession of the goods, as when they are intrusted to his custody and disposal, he may be described as the owner (*R.* v. *Dealkin* (1800), 2 Leach, 862; *R.* v. *Burgess* (1863), Le. & Ca. 299). If a bailor is indicted for stealing his own goods from his bailee, the ownership in the goods must then be laid in the bailee (*R.* v. *Wilkinson* (1821), Russ. & Ry. 470). Goods let with furnished lodgings should be described as the property of the lodger (*R.* v. *Belstead* (1820), Russ. & Ry. 411; *R.* v. *Brunswick* (1824), 1 Mood. C. C. 26), except when they are stolen by the lodger, in which case they should be described as the property of the owner or of the person letting them (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 74; *R.* v. *Healey* (1824), 1 Mood. C. C. 1; *R.* v. *Hurrell* (1825), Ry. & M. 296). Goods seized by the sheriff under a writ of *fieri facias* may, until they are sold, be described as the property of the execution debtor (*R.* v. *Eastall* (1822), 2 Russell on Crimes, 6th ed., 264, 320); but they may also, it seems, be described as the goods of the sheriff (see *R.* v. *Knight* (1908), 1 Cr. App. Rep. 186). Clothes and other necessaries supplied by a parent to a child under age may be described either as the property of the parent or of the child, but are best described as the property of the child (*Anon.* (1701), 2 East, P. C. 654; *R.* v. *Forsgate* (1787), 1 Leach, 463; *R.* v. *Hughes* (1842), Car. & M. 593). Clothes and other articles worn by a married woman and other goods in the possession of a married woman, if they are not her separate property, should be described as belonging to her husband (1 Russell on Crimes, 6th ed., 257); the separate property of a married woman should be described as belonging to her and not to her husband (*R.* v. *Murray*, [1906] 2 K. B. 385, C. C. R.). If the goods of one person are stolen by a thief and are afterwards stolen by another thief, they may be described as the property of the rightful owner, unless they have been sold in market overt (see p. 686, *post*; 2 East, P. C. 654; *R.* v. *Wilkins* (1789), 1 Leach, 520, at p. 522; and Pollock and Wright, Possession in the Common Law, 152). It has been said that such goods may be also described as the property of the first thief (1 Hale, P. C. 507). If a person receives goods on account of someone else and steals them, the goods should be described as the property of the person on whose account they are received (*R.* v. *Rudick* (1838), 8 C. & P. 237); if the thief receives them on account of himself and some other person, the goods should be described as the property of the other person (*R.* v. *Barnes* (1866), L. R. 1 C. C. R. 45); and see Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 80, 81; Larceny Act, 1868 (31 & 32 Vict. c. 116), s. 1; Larceny Act, 1901 (1 Edw. 7, c. 10); *R.* v. *Robson* (1885), 16 Q. B. D. 137, C. C. R.). In indictments for stealing or embezzling property vested in the trustee of a bankrupt by virtue of his appointment the property may be laid in "the trustee of the property of ——, a bankrupt," without inserting the name of the trustee. But in indictments against a bankrupt under the Debtors Act, 1869 (32 & 33 Vict. c. 62), Part II., s. 11, for concealing etc. his property, the property must be described as the property of the bankrupt (see Archbold, Criminal Pleading, 23rd ed., 1140). If property belongs to a corporation aggregate, it must be described as belonging to the corporation by its corporate name (*R.* v. *Patrick* (1783), 1 Leach, 253; see 10 Co. Rep. 29 b; Cro. Eliz. 351; Bac. Abr. Corporations, C, 3; *R.* v. *Frankland* (1863), Le. & Ca. 276). If the property belongs to an incorporated company which is in liquidation, but the liquidator has not taken possession of the property or dealt with it as his, the property should be laid in the company (*R.* v. *Bell* (1877), 13 Cox, C. C. 623, C. C. R). If property belongs to, or is in the possession of more than one person, whether partners in trade, joint tenants, parceners or tenants in common, it may be described as belonging to such persons or to one of such persons and another or others, as the case may be (Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 14); see *R.* v. *Boulton* (1833), 5 C. & P. 537; *R.* v. *Gaby* (1810), Russ. & Ry. 178; *R.* v. *Scott* (1801), Russ. & Ry. 13. If a joint owner,

tenant in common, or partner is indicted for an offence in respect of the property of which he is joint owner etc., and it is necessary to aver to whom the property belongs, the property should be described as belonging to one or more of the other joint owners etc. other than the defendant and to another or others (see *R.* v. *Webster* (1861), Le. & Ca. 77). The property in bells and other goods belonging to a church may be laid in the parishioners, or, it seems, in the churchwardens (1 Hale, P. C. 512). In *R.* v. *Wortley* (1846), 1 Den. 162, it was held that the property in a collecting box was rightly laid in the vicar and churchwardens. The property in the church may be laid in the incumbent (see 2 East, P. C. 651). As to lead stolen from a vault in a churchyard, see *R.* v. *Garlick* (1843), 1 Cox, C. C. 52. The property in the goods in a dissenting chapel vested in trustees should be laid in the trustees or in one or more of them (*R.* v. *Boulton* (1833), 5 C. & P. 537). In indictments for stealing or embezzling property belonging to banking co-partnerships formed under the Country Bankers Act, 1826 (7 Geo. 4, c. 46), or for any fraud, forgery, or offence committed against or with intent to defraud such co-partnerships, the property may be described as belonging to one of the public officers of such co-partnerships, and the name of any one of such public officers may be used in all indictments instead of the names of the persons forming the co-partnership (Country Bankers Act, 1826 (7 Geo. 4, c. 46), s. 9). The property may also in such a case be laid in one of the members of the co-partnership and others under the Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 14 (*R.* v. *Pritchard* (1861), Le. & Ca. 34; see 1 Russell on Crimes, 6th ed., 30). See also, as to joint stock banking companies, Joint Stock Companies Act, 1840 (3 & 4 Vict. c. 111). The property in money, goods, chattels, securities for money, and all other effects belonging to a friendly society, or to any branch of such society, may be laid in the trustees for the time being in their proper names as trustees for the society or branch, without any further description (Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), s. 51; *R.* v. *Marks* (1866), 10 Cox, C. C. 367). The property in money etc. belonging to a registered trade union may be laid in the person or persons for the time being holding the office of trustee or trustees, in his or their proper name or names, as trustees of such trade union, without any further description (Trade Union Act, 1871 (34 & 35 Vict. c. 31), s. 8; Trade Union Act Amendment Act, 1876 (39 & 40 Vict. c. 22), s. 3); so as to the property of trustee savings banks (Trustee Savings Banks Act, 1863 (26 & 27 Vict. c. 87), s. 10; see *R.* v. *Bull* (1845), 1 Cox, C. C. 137) and loan societies (Loan Societies Act, 1840 (3 & Vict. c. 110), s. 8).

County property, if vested in the county council of the administrative county in which the property is, should be laid in "the county council of ——" (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 3 (iv.)); and see *R.* v. *Hunting* (1908), 1 Cr. App. Rep. 177). Other county property not so vested may be laid in the inhabitants of the county (Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 15). Property in prisons and the things therein vested in the Prison Commissioners should be laid in the Prison Commissioners (Prison Act, 1877 (40 & 41 Vict. c. 21), s. 48). Property of the guardians of the poor of every union formed under the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), and of every parish placed under the control of a board of guardians by virtue of that Act, should be laid in the "guardians of the poor of the —— union" (or "of the parish of ——, in the county of ——") (Union and Parish Property Act, 1835 (5 & 6 Will. 4, c. 69), s. 7; Poor Law Amendment Act, 1842 (5 & 6 Vict. c. 57), s. 16). Property procured or provided for the use of the poor of any parish, township, or hamlet, if such property is not vested in the guardians of the poor of a union, may be laid in "the overseers for the time being" of the parish, township, or hamlet, without stating or specifying the names of any of them (Poor Relief Act, 1815 (55 Geo. 3, c. 137), s. 1; *R.* v. *Went* (1818), Russ. & Ry. 359; *Doe* d. *Norton* v. *Webster* (1840), 12 Ad. & El. 442). Other parish property in a rural parish, if vested in the parish council, may be laid in "the parish council of ——," or if under the control of the parish meeting, may be laid in "the chairman of the parish meeting and the overseers of the parish of ——" (Local Government Act, 1894 (56 & 57 Vict. c. 73), ss. 5, 52 (5)). In an indictment against a collector or overseer of a parish for embezzling money collected by him from the ratepayers the property in the money should be laid in the inhabitants of the parish, and the names of the inhabitants need not be specified (Poor Law Amendment Act, 1849 (12 & 13 Vict. c. 103), s. 15; *R.* v. *Smallman*,

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Counts.

1307. Several counts may be inserted in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, which may have been committed by him against the same person within six months from the first to the last of such acts, and the prosecution may proceed at the trial upon all of them (*e*).

If it appears at the trial that the property, alleged in the indictment to have been stolen at one time, was taken at different times, the prosecution will not be required to elect upon which taking they will proceed, unless it appears that there were more than three takings, or that more than six months elapsed between the first and the last of them; otherwise the prosecution must elect upon which three charges occurring within six months they will proceed (*f*).

[1897] 1 Q. B. 4, C. C. R.). In an indictment for larceny of meat bought for the use of inmates of a county asylum, the property should be laid in the county council, not in the visiting committee (*R.* v. *Hunting* (1908), 73 J. P. 12, C. C. A.).

The property in materials, tools or implements, provided for making, altering, or repairing any highway may be laid in the local authority in whom the highway is vested—*i.e.*, as to main roads and county bridges outside London, the county council in whom the highway is vested (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 11 (6)); as to main roads and other highways in London outside the City, the metropolitan borough council (London Government Act, 1899) (62 & 63 Vict. c. 14), s. 6); as to highways in the City of London, the City Corporation (City of London Sewers Act, 1848 (11 & 12 Vict. c. clxiii.; City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii.), s. 5); as to highways outside London in boroughs, the town council; in urban districts, the urban district council (Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 144, 149); in rural districts the rural district council (Highway Act, 1862 (25 & 26 Vict. c. 61), s. 11; Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 25). As to bridge approaches and embankments vested in the London County Council, see London Government Act, 1899 (62 & 63 Vict. c. 14), s. 6). The property in any sewer or other matter within or under the view, cognisance, or management of commissioners of sewers may be laid in the commissioners of sewers within or under whose view etc. the property may be, and the names of the commissioners need not be specified (Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 18).

In indictments for stealing etc. clothes, linen, or other goods belonging to the Chelsea Hospital, or the commissioners of the hospital, the property may be laid in "the lords and others, commissioners of the royal hospital for soldiers at Chelsea in the county of Middlesex" (Chelsea and Kilmainham Hospitals Act, 1826 (7 Geo. 4, c. 16), s. 35).

In indictments for stealing post letters etc., and for offences in respect of telegraphic messages sent by or intrusted to the Postmaster-General, the property in such letters and messages may be laid in "His Majesty's Postmaster-General (Post Office Act, 1908 (8 Edw. 7. c. 48), s. 73).

The property in moneys, chattels or valuable securities stolen or embezzled by persons in the public service, or by constables or other persons employed in the police of any county, city, or borough, district, or place, may be laid in the King (Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 69, 70); and see as to officers in the customs, Customs Consolidation Act, 1876 (39 & 40 Vict. c. 46), s. 29.

(*e*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 5. It is usual, and apparently necessary, that the second and third counts of the indictment should state expressly that the offences charged in them were committed within six months, although the dates may be stated, otherwise the prosecution will be confined to one charge (*R.* v. *Lonsdale* (1864), 4 F. & F. 56, 59); see, however, *R.* v. *Nicholls* (1904), 68 J. P. 452, C. C. R., in which a large number of different takings were alleged in one count, no date being stated.

(*f*) *Ibid.*, s. 6. It is not necessary to allege any date in the indictment (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 24), nor will the

SECT. 1. Taking Property.

Evidence.

1308. On an indictment for larceny the prosecution must prove that the goods mentioned in the indictment were the property of the person who is alleged in the indictment to be the owner, and that defendant took the goods away and that he took them away with a dishonest intent. It must also appear that the goods were such as may be the subject of larceny either at common law or by statute, and that they were taken from the owner against his will.

Evidence that the defendant was seen to take the goods in question is not essential; it is sufficient if he was found in possession of stolen property shortly after the theft; in such a case the jury are generally warranted in concluding that he stole the goods or came by them dishonestly, unless he gives a satisfactory explanation to show how he came by the goods. The weight of such a presumption depends upon the nature of the thing stolen, and the length of time which has elapsed since the stealing (*g*).

So also if upon the trial of a person for larceny it is proved that he took the property in such manner as to amount in law to embezzlement, the jury may return as their verdict that he is not guilty of larceny but is guilty of embezzlement, and he is thereupon to be punished as if he had been indicted for the latter offence.

No person tried for larceny or embezzlement is liable to be afterwards prosecuted for larceny or embezzlement on the same facts (*h*).

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indictment be quashed, although it appears by the evidence that there were more than three separate takings, but upon such evidence being given the prosecution may be required to elect upon which three they will proceed (*R.* v. *Nicholls* (1904), 68 J. P. 452, C. C. R.). If there has been a continuous taking the court will not compel the prosecution to elect (*R.* v. *Bleasdale* (1848), 2 Car. & Kir. 765; *R.* v. *Firth* (1869), 11 Cox, C. C. 234, 238, 240, C. C. R.; *R.* v. *Henwood* (1870), 11 Cox, C. C. 526, C. C. R.).

An indictment for larceny may be in the following form:—"Worcestershire to wit. The jurors [for our lord the King] upon their oath present that John Jones on the first day of February in the year of our Lord, one thousand nine hundred and nine, [in the parish of —— in the said county] one silver watch of the goods and chattels of James Smith feloniously did steal, take and carry away against the peace, etc."

(*g*) See *Anon.* (1826), 2 C. & P. 459; *R.* v. *Adams* (1829), 3 C. & P. 600; *R.* v. *Cockin* (1836), 2 Lewin, 235; *R.* v. *Hall* (1845), 1 Cox, C. C. 231; *R.* v. *Hewlett* (1843), 3 Russell on Crimes, 355—6, n.; *R.* v. *Cooper* (1852), 3 Car. & Kir. 318; *R.* v. *Harris* (1860), 8 Cox, C. C. 333; *R.* v. *Knight* (1864), Le. & Ca. 378; *R.* v. *Evans* (1847), 2 Cox, C. C. 270; *R.* v. *Langmead* (1864), Le. & Ca. 427; *R.* v. *Partridge* (1836), 7 C. & P. 551; *R.* v. *Smith* (1862), 3 F. & F. 123; *R.* v. *Hornby* (1844), 1 Car. & Kir. 305; *R.* v. *Tideswell*, [1905] 2 K. B. 273, C. C. R.; and p. 681, *post*. As to a dishonest gift by the servant of his master's property, see *R.* v. *White* (1840), 9 C. & P. 344, ERSKINE, J.

(*h*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 72. In *R.* v. *Gorbutt* (1857), Dears. & B. 166, it was held upon a similar section in the repealed Criminal Procedure Act, 1851, *supra*, s. 13, that although a prisoner indicted for stealing may be convicted of embezzlement, yet he cannot be convicted of stealing if there is only evidence of embezzlement, and that in such a case a conviction for larceny or a general verdict of guilty upon an indictment for larceny must be quashed. This decision makes it still desirable to consider the distinguishing features between larceny by a servant and embezzlement, notwithstanding the beneficial provisions of s. 72 and the fact that the punishment for the two offences is the same. But having regard to the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), s. 5 (2), *R.* v. *Gorbutt* would probably not now be followed in the Court of Criminal Appeal, as that court would in such a case have the power to substitute a verdict of embezzlement for one of larceny.

SECT. 1. Taking Property.

SUB-SECT. 2.—*Embezzlement.*

Embezzlement.

1309. A servant who steals moneys or goods after they have come to the possession of his master, although they may be in the servant's custody, is guilty of larceny; but a servant who fraudulently intercepts moneys or goods before they come into his master's legal possession and converts them to his own use, commits the offence of embezzlement (*i*).

1310. By statute (*k*) anyone who, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, fraudulently embezzles any chattel, money, or valuable security (*l*) delivered to or received or taken into possession by him for or in the name or on the account of his master or employer, or any part thereof, is deemed to have feloniously stolen the same from him, although such property was not received into the possession of the master or employer otherwise than by the actual possession of his clerk, servant, or other person so employed.

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years, and if the offender is a male under the age of sixteen years, he may be sentenced to a whipping (*m*).

Verdict.

1311. If upon the trial of a person indicted for embezzlement it is proved that he took the property in such manner as to amount in law to larceny, he is not entitled to be acquitted, but the jury may return as their verdict that he is not guilty of embezzlement, but is guilty of simple larceny, or of larceny as a clerk, or as a person employed in the public service or in the police, as the case may be, and he is then punishable as if he had been convicted on an indictment for such larceny (*n*).

Charging different embezzlements in one indictment.

1312. The prosecution may charge in the indictment and proceed against the offender for any number of distinct acts of embezzlement, not exceeding three, which may have been committed against the same master or employer within six months (*o*).

(*i*) There was some doubt whether in certain cases a taking by a servant from his master was punishable as larceny at common law (see stat. (1529) 21 Hen. 8, c. 7); embezzlement was not so punishable, the original taking being lawful, and the goods never having come into the actual possession of the master (1 Hale, P. C. 668; *R.* v. *Bazeley* (1799), 2 Leach, 835).

(*k*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 68.

(*l*) For the definition of "valuable security," see p 642, *ante*.

(*m*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 68; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions.

(*n*) Larceny Act, 1861 (24 & 25 Vict. c 96), s. 72; *R.* v. *Rudge* (1874), 13 Cox, C. C. 17, C. C. R.

(*o*) Larceny Act, 1861 (24 & 24 Vict. c. 96), s. 71; and see the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 18. The three offences must be charged in different counts, and the date of each offence is the date of the embezzlement, which may be subsequent to the date of receipt; the indictment must allege in terms that the three sums were embezzled within six months (*R.* v. *Purchase* (1842), Car. & M. 617, PATTESON, J.; *R.* v. *Noake* (1848), 2 Car. & Kir. 620, CRESSWELL, J.). Upon an indictment for embezzling money,

If more than three acts of embezzlement are charged in one indictment, or if sums are alleged to have been received on one day and the evidence shows that they were received on several days, the prosecution will be required to elect on which charge they will proceed (*a*). But where it is the prisoner's duty to account at fixed times for his aggregate receipts to date, each failure to account constitutes one act of embezzlement, and three of such embezzlements, if within six months, may be charged in the indictment, and the aggregate receipts for which he should have accounted at each of such periods may be proved (*b*).

If the offence relates to any money or any valuable security, it is sufficient to allege the embezzlement to be of money or a valuable security without specifying any particular coin or valuable security.

Evidence.

1313. The accused may be convicted, although the coin or valuable security was delivered to him in order that some part of the value thereof should be returned to the person delivering it or to some other person and such part has been returned accordingly (*c*). There must be evidence that specific sums have been received and have been embezzled and not accounted for. It is not sufficient to show a general deficiency without proving the specific sums, or some of them, constituting such deficiency (*d*).

To rebut a defence that errors in a clerk's account were accidental or innocent, evidence may be given of other similar errors by the prisoner in his own favour (*e*).

What is a clerk or servant.

1314. A clerk or servant is a person under the control and bound to obey the orders of his master. He may be a clerk or servant without being bound to devote his whole time to this service, but if he is bound to devote his whole time to it, this is strong evidence of his being under control (*f*).

A person who is employed to get orders and receive money, but who is at liberty to get the orders and receive the money when and where he thinks proper, is not a clerk or a servant (*g*).

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if the evidence shows that the prisoner received a cheque, it must also be proved that he cashed it or attempted to do so (*R.* v. *Keena* (1868), L. R. 1 C. C. R. 113); upon an indictment charging the embezzlement of money the prisoner cannot be convicted of embezzling goods (*R.* v. *Clarke* (1905), 69 J. P. 150, C. C. R.).

(*a*) *R.* v. *Williams* (1834), 6 C. & P. 626; and see p. 648, *ante*.

(*b*) *R.* v. *Balls* (1871), L. R. 1 C. C. R. 328 (where thirty-one separate sums which the prisoner had received and not accounted for were proved, and the conviction was affirmed).

(*c*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 71.

(*d*) *R.* v. *Jones* (1838), 8 C. & P. 288, ALDERSON, B.; *R.* v. *Chapman* (1843), 1 Car. & Kir. 119, WILLIAMS, J.; *R.* v. *Wright* (1858), Dears. & B. 431; *R.* v. *Wolstenholme* (1869), 11 Cox, C. C. 313, BRETT, J.; see, however, *R.* v. *Lambert* (1847), 2 Cox, C. C. 309, ERLE, J.; *R.* v. *Grove* (1835), 7 C. & P. 635; 1 Mood. C. C. 447 (where a contrary conclusion seems to have been arrived at by eight judges against seven), is not now considered to be law. See the observations of ALDERSON, B., on this case in *R.* v. *Jones*, *supra*, also *R.* v. *Moah* (1856), 7 Cox, C. C. 60, 68.

(*e*) *R.* v. *Richardson* (1860), 2 F. & F. 343; *R.* v. *Proud* (1861), Le. & Ca. 97; *R.* v. *Stephens* (1888), 16 Cox, C. C. 387, C. C. R.

(*f*) *R.* v. *Negus* (1873), L. R. 2 C. C. R. 34, 37.

(*g*) *R.* v. *Negus*, *supra*; *R.* v. *Bowers* (1866), L. R. 1 C. C. R. 41, 45; *R.* v. *Mayle* (1868), 11 Cox, C. C. 150; *R.* v. *Marshall* (1870), 11 Cox, C. C. 490,

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Whether the accused was acting as a clerk or servant is a question of fact for the jury (*h*).

What constitutes embezzlement.

1315. It is not a criminal offence to embezzle the moneys of an unlawful and criminal society (*i*). But the members of a society

C. C. R.; *R.* v. *Hall* (1875), 13 Cox, C. C. 49, C. C. R.; *R.* v. *Walker* (1858), 8 Cox, C. C. 1, C. C. R.; *R.* v. *May* (1861), Le. & Ca. 13. In the following cases the accused were held to be clerks or servants or acting as such:—*R.* v. *Stuart*, [1894] 1 Q. B. 310, C. C. R. (director of company employed to collect the company's moneys); *R.* v. *Mellish* (1805), Russ. & Ry. 80 (an apprentice); *R.* v. *Squire* (1818), Russ. & Ry. 349 (accountant and treasurer to overseers); *R.* v. *Hartley* (1807), Russ. & Ry. 139 (captain of barge authorised to sell coal); *R.* v. *Tite* (1861), Le. & Ca. 29, C. C. R.; *R.* v. *Bailey* (1871), 12 Cox, C. C. 56, C. C. R. (commercial traveller paid by commission and allowed to obtain orders for others); *R.* v. *Gibson* (1861) 8 Cox, C. C. 436 (solicitor employed at a salary to collect rents and manage property); *R.* v. *Thomas* (1853), 6 Cox, C. C. 403 (a collier allowed to sell coal but not obliged to do so); *R.* v. *Spencer* (1815), Russ. & Ry. 299; *R.* v. *Winnall* (1851), 5 Cox, C. C. 326; *R.* v. *Hughes* (1832), 1 Mood. C. C. 370 (a person only occasionally employed); *R.* v. *Batty* (1842), 2 Mood. C. C. 257; *R.* v. *Turner* (1870), 11 Cox, C. C. 551; *R.* v. *Carr* (1811), Russ. & Ry. 198 (a person employed also by others); but see the observations of PARKE, B., in *R.* v. *Goodbody* (1838), 8 C. & P. 665; *R.* v. *Foulkes* (1875), L. R. 2 C. C. R. 150 (son assisting father who was employed by prosecutors); *R.* v. *Wortley* (1851), 5 Cox, C. C. 382, C. C. R.; *R.* v. *McDonald* (1861), Le. & Ca. 85 (a person partly paid by a share of profits); *R.* v. *Proud* (1861), Le. & Ca. 97; *R.* v. *Hall* (1836), 1 Mood. C. C. 474; *R.* v. *Miller* (1842), 2 Mood. C. C. 249 (member of friendly society employed to receive weekly payments the property of the society being vested in trustees); but see *R.* v. *Loose* (1860), 29 L. J. (M. C.) 132, C. C. R.; *R.* v. *Marsh* (1862), 3 F. & F. 523; *R.* v. *Bren* (1863), Le. & Ca. 346; *R.* v. *Tyree* (1869), L. R. 1 C. C. R. 177; *R.* v. *Flanagan* (1867), 10 Cox, C. C. 561 (a broker exclusively employed at a salary to distrain); *R.* v. *Solomons* (1909), 25 T. L. R. 747, C. C. A. (the driver of a taxicab). The following were held not to be clerks or servants or employed in that capacity: *R.* v. *Barnes* (1859), 8 Cox, C. C. 129 (a debtor employed by trustee under deed of assignment); *R.* v. *Hoare* (1859), 1 F. & F. 647 (a person employed or authorised to receive rents gratuitously); *R.* v. *Goodbody* (1838), 8 C. & P. 665 (cattle drover permitted to sell); *R.* v. *Burton* (1829), 1 Mood. C. C. 237 (a person employed to collect an offertory); *R.* v. *Freeman* (1833), 5 C. & P. 534; *R.* v. *Nettleton* (1830), 1 Mood. C. C. 259 (a person having an isolated authority to receive money); but see *R.* v. *Hughes* (1832), *ibid.* 370; *R.* v. *Tyree* (1869), L. R. 1 C. C. R. 177 (the treasurer of a friendly society); *R.* v. *Gibbs* (1855), 6 Cox, C. C. 455, C. C. R. (a bailee).

An assistant overseer in a rural parish, though appointed by the parish council, is the clerk or servant of the inhabitants of the parish, and should be so described in the indictment (Poor Law Amendment Act, 1849 (12 & 13 Vict. c. 103), s. 15; *R.* v. *Watts* (1837), 7 Ad. & El. 461, 469; see and compare *R.* v. *Sampson* (1846), 1 Cox, C. C. 355; *R.* v. *Carpenter* (1866), L. R. 1 C. C. R. 29; *R.* v. *Smallman*, [1897] 1 Q. B. 4, C. C. R.); and it is submitted that where in a municipal borough or urban district the appointment of assistant overseers either has or has not been conferred on the borough or district council under the Local Government Act, 1894 (56 & 57 Vict. c. 73), s. 33 (1), such an officer should still be described as the servant of the inhabitants notwithstanding *R.* v. *Coley* (1887), 16 Cox, C. C. 226, C. C. R., which case, however, was not cited in *R.* v. *Smallman*, *supra*.

If the agreement of service is in writing, and is in existence, the writing must be put in evidence (*Re Clapton* (1848), 3 Cox, C. C. 126). In most cases, such as those in which it was held that the prisoner could not be convicted of embezzlement on the ground that he was not acting as clerk or servant to the prosecutor, he may now be indicted under the Larceny Act, 1901 (1 Edw. 7, c. 10), p. 660, *post*, for the fraudulent conversion of the property received see *e.g.*, *R.* v. *Lord* (1905), 69 J. P. 467, C. C R. As to officers of a local marin; board, see Merchant Shipping Act, 1894 (57 & 58 Vict. c. 607), s. 248.

(*h*) *R.* v. *Chater* (1861), 9 Cox, C. C. 1.

(*i*) *R.* v. *Hunt* (1838), 8 C. & P. 642.

which does not exist for a criminal purpose, but which is irregularly constituted (*k*), or one of the objects of which is in restraint of trade (*l*), may be the joint beneficial owners of property, and such property may be the subject of embezzlement.

To constitute embezzlement the property must have been received by the accused for, or in the name or on account of, the employer of the accused (*m*). If it has already been in the employer's possession (*n*), or, having been in the possession of any other clerk or servant on behalf of the master, is given by such clerk or servant to the prisoner to be paid or delivered to some person on account of the employer and the prisoner misappropriates it, the offence is not embezzlement (*o*).

If the property is in the possession of another clerk or servant of the employer, and is delivered by him to the prisoner to deliver to the employer, and the prisoner misappropriates it, he commits embezzlement (*p*).

The crime of embezzlement is complete when the servant fraudulently misappropriates the property, and he is not necessarily entitled to be acquitted because he has made true and correct entries in his master's accounts (*q*). But if the money received for the employer is accounted for and not denied, the fact of not paying it over without some evidence of fraudulent intent is not sufficient proof of the felony (*r*).

(*k*) *R.* v. *Tankard*, [1894] 1 Q. B. 548, C. C. R.

(*l*) *R.* v. *Stainer* (1870), L. R. 1 C. C. R. 230.

(*m*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 68; *R.* v. *Beaumont* (1854), Dears. C. C. 270; *R.* v. *Harris* (1854), Dears. C. C. 344; *R.* v. *Thorpe* (1858), Dears. & B. 562; *R.* v. *Gale* (1876), 2 Q. B. D. 141, C. C. R. If the receipt by the prisoner is wholly wrongful, being in his own name and on his own account, as where the prisoner earned money in his own name by a wrongful or dishonest user of his master's property, the offence is not embezzlement (*R.* v. *Cullum* (1873), L. R. 2 C. C. R. 28; *R.* v. *Read* (1877), 3 Q. B. D. 131, C. C. R.).

(*n*) *R.* v. *Hayward* (1844), 1 Car. & Kir. 518; *R.* v. *Reed* (1854), 6 Cox, C. C. 284, 289, C. C. R. In these cases the goods had been put down by the prisoner at his master's door or placed by him in the master's cart, and it was held that although the prisoner still remained in personal possession of the goods, his exclusive possession had been so far determined that the goods had come into the master's constructive possession and that the offence was larceny and not embezzlement.

(*o*) *R.* v. *Murray* (1830), 1 Mood. C. C. 276; *R.* v. *Hawkins* (1850), 4 Cox, C. C. 224, C. C. R.; *R.* v. *Wright* (1858), Dears. & B. 431. In such cases the offence is larceny, and the prisoner may be convicted of that offence (see p. 644, *ante*); or he may be indicted for a misdemeanour under the Larceny Act, 1901 (1 Edw. 7, c. 10).

(*p*) *R.* v. *Masters* (1848), 1 Den. 332.

(*q*) *R.* v. *Guelder* (1860), 8 Cox, C. C. 372, C. C. R.; see also *R.* v. *Lister* (1856), 7 Cox, C. C. 203, C. C. R.; *R.* v. *White* (1839), 8 C. & P. 742; *R.* v. *Jackson* (1844), 1 Car. & Kir. 384; *R.* v. *Davison* (1855), 7 Cox, C. C. 158, 162, 163. It appears impossible to reconcile with these cases *R.* v. *Jones* (1837), 7 C. & P. 833, in which BOLLAND, B., is reported to have said that for a clerk to put the money in his own pocket and make no entry was not sufficient evidence of embezzlement, and *R.* v. *Creed* (1843), 1 Car. & Kir. 63, where ERSKINE, J., held that a clerk who had rendered a true account of money which he had received, and did not pay it over but absconded, could not be convicted of this offence; see also *R.* v. *Winnall* (1851), 5 Cox, C. C. 326.

(*r*) *R.* v. *Hodgson* (1828), 3 C. & P. 422, VAUGHAN, B.

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If the prisoner does not deny the receipt or appropriation of the property which he is accused of embezzling, but acknowledges that he received it and alleges a right, or an excuse for detaining the property, unless it is clear that such allegation is merely a pretence, he should not be convicted of embezzlement (*s*).

Where embezzlement committed.

1316. The embezzlement is committed in the place where the accused person has refused to account (*t*), or, if there is no evidence of fraudulent embezzlement except the non-accounting, in the place where he ought to have accounted and failed to do so (*a*), or has accounted falsely (*b*), or in the place where he received and misappropriated the property in question (*c*).

Embezzlement by officer etc. of Bank of England.

1317. Any officer or servant of the Bank of England or of the Bank of Ireland is by statute (*d*) guilty of felony who, being intrusted with any bond, deed, note, bill, dividend warrant, or warrant for payment of any annuity or interest or money, or with any security, money, or other effects (*e*) of such bank, or having any such property of any other person lodged or deposited with such bank or with him as an officer or servant thereof, secretes, embezzles, or runs away with the same or any part thereof.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*f*).

Embezzlement by person in the King's service, police etc.

1318. Whoever, being employed in the King's public service, or being a constable or other person employed in the police of any county, city or place, and intrusted by virtue of such employment with the custody, management, or control of any chattel, money, or valuable security, embezzles any chattel, money, or valuable security intrusted to or received or taken into possession

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(*s*) See *R.* v. *Norman* (1842), Car. & M. 501, CRESSWELL, J.

(*t*) *R.* v. *Murdock* (1851), 5 Cox, C. C. 360, C. C. R.; *R.* v. *Taylor* (1803), 2 Leach, 974. As to place of trial, see p. 280, note (*r*), *ante*.

(*a*) *R.* v. *Davison* (1855), 7 Cox, C. C. 158, 162; and see *R.* v. *Rogers* (1877), 3 Q. B. D. 28, C. C. R., at p. 40.

(*b*) *R.* v. *Murdock*, *supra*; *R.* v. *Rogers*, *supra*; but not in a place where he has accounted truly and in which he did not receive the money alleged to be embezzled, there being no evidence to show that, although he lived there, he had taken the money to that place (*R.* v. *Treadgold* (1878), 14 Cox, C. C. 220, C. C. R.).

(*c*) *R.* v. *Hobson* (1803), Russ. & Ry. 56; *R.* v. *Rogers*, *supra*, at pp. 40, 41.

(*d*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 73. Documents to which a bank clerk merely has access, but to which his duty has no relation, are not documents intrusted to him within the meaning of this section (*R.* v. *Bakewell* (1802), Russ. & Ry. 35).

(*e*) Documents issued as Exchequer bills, but invalid as such from the want of a proper signature, are such "effects" (*R.* v. *Aslett* (1804), Russ. & Ry. 67).

(*f*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 73; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

by him by virtue of his employment, or in any manner fraudulently applies or disposes of the same to his own use or benefit, or for any purpose whatsoever except for the public service, is by statute deemed to have feloniously stolen the same from the King (*g*).

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*h*).

Such person may be indicted either in the place where he is apprehended, or is in custody, or in which he has committed the offence. In the indictment the property may be laid in the King.

SUB-SECT. 3.—*Fraudulent Misappropriation by Directors, Trustees etc.*

Misappropriation of annuities etc.

1319. Everyone is by statute (*i*) guilty of a misdemeanour who, being a person authorised to receive money to arise from the sale of any annuities or securities purchased or transferred under the provisions of Part V. of the Municipal Corporations Act, 1882 (*k*), or any dividends thereon, or any such other money as is therein mentioned, appropriates the same otherwise than is directed by that Act or by the Treasury in pursuance thereof.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*l*).

Misappropriation by directors etc.

1320. Any director, member, or public officer of any body corporate or public company is by statute guilty of a misdemeanour (*m*) who fraudulently (*n*) takes or applies for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of its property.

The punishment for this offence is penal servitude for not more

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(*g*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 70. As to larceny by such officers, see s. 69, p. 644, *ante*. For the definition of "valuable security," see p. 642, *ante*. A person employed by an inspector of prisons to collect contributions due from the parents of children committed to reformatory and industrial schools is employed in the King's public service (*R.* v. *Graham* (1875), 13 Cox, C. C. 57, C. C. R.). An assistant bailiff appointed by the high bailiff of a county court is not a person employed in the public service, but is the servant of the high bailiff and must be indicted as such (*R.* v. *Parsons* (1888), 16 Cox, C. C. 498). By the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 29, any moneys, chattels, or valuable securities received by any officer, clerk, or other person in the service of the customs, either as duties or in virtue of his office or employment or otherwise for the use and service of His Majesty or of any public department, are to be deemed to be moneys, chattels, or valuable securities for the public service, and are to be considered as such within the meaning of the Larceny Act, 1861 (24 & 25 Vict. c. 96), and may be alleged in an indictment to be the property of His Majesty

(*h*) Larceny Act, 1861 (24 & 25 Vict. c. 95), s. 70; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is, it seems, triable at quarter sessions, but see Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1.

(*i*) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 117; Larceny Act, 1901 (1 Edw. 7, c. 10).

(*k*) 45 & 46 Vict. c. 50.

(*l*) *Ibid.*, s. 117; Larceny Act, 1901 (1 Edw. 7, c. 10); Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*m*) Larceny Act, 1861 (24 & 25 Vict, c. 96), s. 81; see also p. 657, *post*.

(*n*) *Nelson* v. *R.*, [1902] A. C. 250, P. C.

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than seven or less than three years, or imprisonment with or without hard labour for not more than two years (*o*).

Misappropriation by director etc.

1321. Any director, public officer, or manager of any body corporate or public company is by statute guilty of a misdemeanour (*p*) who as such receives or possesses himself of any of its property otherwise than in payment of a just debt or demand, and who with intent to defraud omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts.

The punishment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*q*).

Misappropriation by trustee.

1322. Everyone is by statute (*r*) guilty of a misdemeanour who, being a trustee of any property (*s*) for the use or benefit, either wholly or partially, of some other person, or for any public or charitable purpose, with intent to defraud converts or appropriates the same or any part thereof to his own use or benefit, or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purpose, or otherwise disposes of or destroys such property or any part thereof.

The punishment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*t*).

No prosecution for this offence may be commenced without the sanction of the Attorney-General or, if that office be vacant, of the Solicitor-General.

(*o*) Larceny Act, 1901 (1 Edw. 7, c. 10, s. 1 (1); Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The punishment for this offence, and for offences against ss. 77—84 of the Act of 1861, is stated in s. 75 of the Larceny Act, 1861 (24 & 25 Vict. c. 96); that section was repealed by the Larceny Act, 1901 (1 Edw. 7, c. 10), s. 1 of which is substituted for ss. 75 and 76 of the Larceny Act, 1861, and imposes the same punishment. None of the offences mentioned in ss. 77—86 of the Larceny Act, 1861, or in the Larceny Act, 1901 (1 Edw. 7, c. 10), are triable at quarter sessions (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 87). As to evidence see p. 657, note (*b*), *post*.

(*p*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 82.

(*q*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*r*) *Ibid.*, s. 80.

(*s*) The term "trustee" here means a trustee on some express trust created by some deed, will, or instrument in writing, and includes the heir or personal representative of any such trustee, and any other person upon or to whom the duty of such trustee shall have devolved or come, and also an executor and administrator and an official manager, assignee, liquidator, or other like officer, acting under any Act relating to joint stock companies, bankruptcy or insolvency (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 1). For a definition of "property" see *ibid.*, and p. 684, note (*a*), *post*. The secretary, trustee, and manager of a savings bank has been held to be within this definition a trustee of money which he received as secretary, and the rules of such a society may be such an instrument as to create an express trust (*R.* v. *Fletcher* (1862), Le. & Ca. 180). A document by which a debtor undertook to hold certain goods in trust for his creditor and to pay him the proceeds thereof is an instrument creating such a trust (*R.* v. *Townshend* (1884), 15 Cox, C. C. 466). It is sufficient for the indictment to allege that the defendant was a trustee without alleging an express trust (*R.* v. *Piper* (1900), 65 J. P. 10).

(*t*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 75; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1; and see note (*o*), *infra*.

If any civil proceedings have been taken against the defendant, no person who has taken such civil proceedings may commence any prosecution for this offence without the sanction of the court or judge before whom such civil proceedings have been or shall be pending (*a*).

The defendant cannot be convicted of this offence by any evidence whatever in respect of any act done by him, if he shall at any time previously to his being charged with such offence have first disclosed such act on oath in consequence of any compulsory process of any court in any action, suit or proceeding *bonâ fide* instituted by any party aggrieved (*b*).

Fraudulent abuse of power of attorney.

1323. Everyone is by statute (*c*) guilty of a misdemeanour who, being intrusted, either solely or jointly with any other person, with any power of attorney for the sale or transfer of any property (*d*), fraudulently sells or transfers or otherwise converts the same or any part thereof to his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not less than two years (*e*).

Frauds by factors and agents.

1324. Everyone is by statute (*e*) guilty of a misdemeanour who, being a factor or agent intrusted either solely or jointly with any other person for the purpose of sale or otherwise with the possession of goods or of any document of title to goods (*f*), makes, contrary to or without the authority of his principal, for the use or benefit of himself or of any person other than his principal and in violation of good faith, any consignment, deposit, transfer, or delivery of any goods or documents of title so intrusted to him, by way of pledge, lien or security for any money or valuable security borrowed or received by such factor or agent, or accepts any advance on the

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(*a*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 80.

(*b*) *Ibid.*, s. 85. A statement or admission made by the defendant in any compulsory examination or deposition before any court on the hearing of any matter in bankruptcy is not admissible in evidence against him in any proceeding in respect of the offence mentioned in ss. 77 to 85 of the Larceny Act, 1861, or in the Larceny Act, 1901 (Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 27 (2), see p. 399, note (*q*), *ante*, but his statement of affairs is admissible (*R.* v. *Pike*, [1902] 1 K. B. 552, C. C. R.). "Shall have first disclosed" means shall have first made known that which before was not known; and there is a great distinction between what is known and what is mere gossip or surmise (*R.* v. *Gunnell* (1886), 16 Cox, C. C. 154, 157, 158, C. C. R.).

(*c*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 77.

(*d*) For definition of "property," see *ibid.*, s. 1, and p. 684, *post*.

(*e*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 78; Larceny Act, 1901 (1 Edw. 7, c. 10), ss. 1, 2. As to evidence, see note (*b*), *supra*.

(*f*) "Document of title to goods" includes any bill of lading, India warrant, dock warrant, warehouse keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought and sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possession of such document to transfer or receive any goods thereby represented or therein mentioned or referred to (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 1).

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faith of any contract to consign, deposit, transfer or deliver such goods or documents of title.

The punishment is penal servitude for not more than seven or for not less than three years, or imprisonment with or without hard labour for not more than two years (*g*).

Every clerk or other person who knowingly and wilfully assists such factor or agent to commit this offence is guilty of a misdemeanour (*h*).

The punishment is penal servitude for not exceeding seven years (*i*).

No such factor or agent is liable to any prosecution for consigning, depositing, transferring or delivering any such goods or documents of title if the same are not made a security for or subject to the payment of any greater sum of money than the amount which at that time was justly due to such agent from his principal, together with the amount of any bill of exchange drawn by or on account of the principal and accepted by the factor or agent (*k*).

Fraudulent misappropriation of property.

1325. Everyone is by statute (*l*) guilty of a misdemeanour who, (1) being intrusted, either solely or jointly with any other person, with any property (*m*) in order that he may retain in safe custody (*n*)

(*g*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 78 ; Larceny Act, 1901 (1 Edw. 7, c 10), ss. 1, 2 ; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*h*) *Ibid.*, s. 77.

(*i*) *Ibid.*, s. 75.

(*k*) *Ibid.*, s. 78. It is provided by s. 79 that any factor or agent so intrusted and possessed of any such document of title, whether derived immediately from the owner or obtained by reason of the factor or agent having been intrusted with the possession of the goods or of any document of title thereto, is to be deemed to have been intrusted with the goods represented by the document of title ; every contract pledging or giving a lien upon such document of title is to be deemed to be a pledge of and a lien upon the goods ; such factor or agent is to be deemed to be possessed of such goods or document whether the same are in his actual custody or held by any other person subject to his control, or for him or on his behalf ; where any advance is *bonâ fide* made to any factor or agent so intrusted on the faith of any contract in writing to consign, deposit, transfer, or deliver the goods or documents of title, and such goods or documents are actually received by the person making such advance without notice that the factor or agent was not authorised to make the pledge or security, such advance is to be deemed to be an advance on the security of the goods or documents of title, though such goods or documents are not actually received by the person making the same till some period subsequent thereto ; any contract, whether made direct with the factor or agent or with any clerk or other person on his behalf, is to be deemed to be a contract made with him ; any payment made, whether by money, bill of exchange, or other negotiable security, is to be deemed to be an advance within the meaning of s. 78 ; and a factor or agent in possession as aforesaid of such goods or documents is to be taken for the purposes of that section to have been intrusted therewith by the owner, unless the contrary be shown in evidence. All the cases provided for by s. 78 of the Act would now appear to be covered by the wider and simpler terms of the Larceny Act, 1901 (1 Edw. 7, c. 10), s. 1, under which proceedings are now usually taken.

(*l*) Larceny Act, 1901 (1 Edw. 7, c. 10), s. 1. This Act is to have effect as part of the Larceny Act, 1861 (24 & 25 Vict. c. 96) ; it repeals ss. 75 and 76 of that Act, and s. 1 of the Larceny Act, 1901 (1 Edw. 7, c. 10), is to be deemed to be substituted for those sections, and references in any Act to those sections are to be construed as references to s. 1 of the Larceny Act, 1901 (1 Edw. 7, c. 10). As to evidence, see p. 657, note (*b*), *ante*.

(*m*) For definition of property, see Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 1, and p. 684, *post*.

(*n*) See *R.* v. *Cooper* (1874), L. R. 2 C. C. R. 123 ; *R.* v. *Newman* (1882),

or apply, pay or deliver, for any purpose or to any person, the property or any part thereof or any proceeds thereof; or (2) having, either solely or jointly with any other person, received any property (*o*) for or on account of any other person (*p*), fraudulently converts to his own use or benefit, or the use or benefit of any other person, the property or any part thereof or any proceeds thereof.

This provision does not apply to or affect any trustee on any express trust created by a deed or will (*q*) or any mortgagee of any property, real or personal, in respect of any act done by the trustee or mortgagee in relation to the property affected by the trust or mortgage (*r*).

The punishment for this offence is penal servitude for not more than seven or for not less than three years, or imprisonment with or without hard labour for not more than two years (*s*).

SUB-SECT. 4.—*Falsification etc. of Accounts.*

Falsification of accounts.

1326. Any clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant (*t*) is by statute guilty of a misdemeanour (*u*) who, (1) wilfully and with intent to defraud, destroys, alters, mutilates, or falsifies any book, paper, writing, valuable security (*x*) or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or who, (2) wilfully and with intent to defraud, makes or concurs in making any false entry in, or omits or alters, or concurs in omitting or altering, any material particular from or in any such book, or any document or account (*a*).

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8 Q. B. D. 706, C. C. R. decided on ss. 75, 76 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), now repealed.

(*o*) See note (*a*), p. 684, *ante*.

(*p*) A debt collector who dishonestly appropriates moneys received for his principal may be convicted of this offence (*R.* v. *Lord* (1905), 69 J. P. 467, C. C. R.); compare *R.* v. *Hotine* (1904), 68 J. P. 143, BOSANQUET, K.C., Common Serjeant, where the money having been received by the defendant as deposits from persons whom he engaged as clerks, it was held that the case was not within the Act. The receipt must be for or on account of the prosecutor, and where the money was received from debtors who only knew the defendant as their creditor, and knew nothing of the prosecutor to whom the defendant had transferred his business, an acquittal was directed (*R.* v. *South* (1907), 71 J. P. 191, BOSANQUET, K.C., Common Serjeant).

(*q*) As to trustees, see p. 656, *ante*.

(*r*) Larceny Act, 1901 (1 Edw. 7, c. 10), s. 1 (2).

(*s*) *Ibid.*, s. 1; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*t*) See p. 651, *ante*. The record of a taxicab is an account within this section (*R.* v. *Solomons* (1909), 25 T. L. R. 747, C. C. A.).

(*u*) Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24), s. 1. This Act is to be read as one with the Larceny Act, 1861 (24 & 25 Vict. c. 96) (*ibid.*, s. 3). It is sufficient in any indictment under the Act to allege a general intent to defraud without naming any particular person intended to be defrauded (*ibid.*, s. 2). To cause fraudulently an innocent person to make, or to concur fraudulently in his making, a false entry is within the Act (*R.* v. *Butt* (1884), 15 Cox, C. C. 564, C. C. R.). A person who delivers an account accurate in its details, and which states the final balance as being "balance in hand," does not commit this offence, although he may not have in his possession the amount of such balance (*R.* v. *Williams* (1899), 19 Cox, C. C. 239, C. C. R.). As to the use by an agent of a false document with intent to deceive his principal, see p. 710, *post*.

(*x*) See p. 642, *ante*.

(*a*) Although not so expressly stated in the section, document or account

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The punishment for this offence is penal servitude for not more than seven nor less than two years, or imprisonment with or without hard labour for not more than two years (*b*).

Destruction of book of company by director etc.

1327. Any director, officer, or contributory of any company being wound up is by statute guilty of a misdemeanour (*c*) who (1) destroys, mutilates, alters, or falsifies any books, papers, or securities, or who (2) makes or is privy to making any false or fraudulent entry in any register, book of account, or document belonging to the company with intent to defraud or deceive any person.

The punishment is imprisonment with or without hard labour for not more than two years (*d*).

1328. Any director, manager, public officer, or member of any body corporate, or public company is guilty of a misdemeanour (*e*) who, with intent to defraud, (1) destroys, alters, mutilates, or falsifies any book, paper, writing, or valuable security (*f*) belonging to the body corporate or company, or (2) makes or concurs in making any false entry, or omits or concurs in omitting any material particular in any book of account or other document.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not less than two years (*g*).

False statements by director etc.

1329. A director, manager (*h*), or public officer of any body corporate or public company is by statute guilty of a misdemeanour (*i*) who makes, circulates, or publishes, or concurs in

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here mentioned must be a document or account belonging to or in possession of the employer, or received by the prisoner for or on account of the employer, and must be so alleged in the indictment (*R.* v. *Palin*, [1906] 1 K. B. 7, C. C. R.). The falsification of a mechanical means of recording an account is within the Act (*R.* v. *Solomons* (1909), 25 T. L. R. 747, C. C. A.).

(*b*) Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24), ss. 1, 3. Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The defendant may also be fined and required to find sureties for good behaviour. Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 117.

(*c*) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 216.

(*d*) *Ibid.* This offence and those previously mentioned in this sub-section are triable at quarter sessions.

(*e*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 83; see also s. 81, and as to evidence p. 657, note (*b*), *ante*.

(*f*) See p. 642, *ante*.

(*g*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 83.

(*h*) A person who is *de facto* manager of the business affairs of the company is a manager within the meaning of the section, although he may not have been formally appointed to that office; but a person who merely controls the policy of the directors or of the company, and who has not been appointed manager, is not within the section (*R.* v. *Lawson*, [1905] 1 K. B. 541, 545, 550, C. C. R.).

(*i*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 84. There is an intent to deceive and defraud if the defendant made or published false statements of account, knowing they were false, with the intent that they should be acted upon by those whom they should reach (*R.* v. *Birt* (1899), 63 J. P. 328; see also *Re London and Globe Finance Corporation, Ltd.*, [1903] 1 Ch. 728, 732). If it appears to the court having jurisdiction in the winding up of public companies in the course of the winding up by or subject to the supervision of the court that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the

making, circulating, or publishing any written statement or account which he knows to be false in any material particular with intent to deceive or defraud any member, shareholder, or creditor thereof, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*k*).

SUB-SECT. 5.—*Robbery.*

1330. Robbery is a felony at common law and also by statute, and consists in the felonious taking (*l*) of money or goods of some value from the person of another, or in his presence, if the property is under his immediate and personal care and protection (*m*), against his will and either by violence or by putting him in fear. Robbery.

The punishment is penal servitude for not more than fourteen or less than three years, or imprisonment with or without hard labour for not more than two years (*n*).

Unless there was a putting in fear, there must have been some violence used. The putting in fear must be before or at the time of the taking; it is not sufficient if it only follows it (*o*). A surreptitious taking from the person is not robbery; nor is a sudden

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court may, on the application of any person interested in the winding up, or of its own motion, direct the liquidator to prosecute for the offence; and may order the costs and expenses to be paid out of the assets of the company. In the case of a voluntary winding up the liquidator may, with the previous sanction of the court, prosecute any such officer or member for any such offence, and the expenses of the prosecution are payable out of the assets of the company in priority to all other liabilities (Companies (Consolidation) Act, 1909 (8 Edw. 7, c. 69), s. 217). In deciding upon an application for leave to institute such a prosecution the court will look to see whether such facts are made out as that, if they are not shown to be erroneous or displaced by other facts, a conviction ought to ensue; it will not have regard to the interests or advantage of any person or class, but will consider whether a good citizen in discharge of his duty to the State would think that in such a case he ought to prosecute and bear the expense (*Re London and Globe Finance Corporation, Ltd.*, [1903] 1 Ch. 728, 733, 735); and the court will not refuse to direct a prosecution merely because the law officers have refused to sanction it (*ibid.*; see also *Re Denham & Co.* (1884), 53 L. J. (CH.) 1113).

(*k*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 84; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*l*) Robbery includes a larceny; as to what amounts to a taking in larceny, see p. 630, *ante*. There is a sufficient taking even though the goods be only for an instant of time in the robber's possession (*R.* v. *Lapier* (1784), 1 Leach, 320).

(*m*) 1 Hale, P. C. 533. If one, having first assaulted another, takes away his horse standing by him; or, having put him in fear, drives his cattle out of his pasture in his presence; or takes up his purse which, in his fright, he has thrown into a bush, these are robberies (1 Hawk. P. C., c. 34, s. 8; 2 East, P. C. 707; *R.* v. *Francis* (1735), 2 Stra. 1015; *R.* v. *Donnally* (1779), 1 Leach, 193, 199; *R.* v. *Selway* (1859), 8 Cox, C. C. 235).

(*n*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 40; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions; but an offence under the Larceny Act, 1861, *supra*, s. 43, is not.

(*o*) 1 Hawk. P. C., c. 34, s. 9; *R.* v. *Gnosil* (1824), 1 C. & P. 304.

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snatching unawares, unless some injury be thereby done to the person, or unless there has been some previous struggle for the possession of the property (*p*).

It is not necessary to allege in the indictment, or to prove that there was actual fear on the part of the person robbed. If money be demanded, and the fact be attended with those circumstances of terror and violence which in common experience are likely to induce a man to part with his property for the safety of his person, the law will presume fear (*q*).

The mode of threatening or the absence of any verbal threat is immaterial, if the circumstances show an intentional putting in fear (*r*). Nor is it necessary that a demand of money should be made, if money is paid from motives of terror (*s*).

It is robbery, if a person is by force or fear compelled to sell his goods at an inadequate price, and if the prisoner's intent was felonious (*t*). The fear may be either of personal violence to the person robbed, or to a member of his family (*a*), or of serious injury to his property (*b*), or of loss of character or place by reason of being charged with unnatural practices, where such a charge is threatened (*c*), whether such charge be true or false (*d*).

Threats to accuse one of a crime other than unnatural practices (*e*), or to accuse a third person of an unnatural offence (*f*), are not sufficient to support an indictment for robbery.

If money is obtained by means of a threat to accuse of unnatural practices, this does not amount to robbery, unless the payment is made at the time; if the payment is not until after the prosecutor

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(*p*) 2 East, P. C. 702, 708; *R.* v. *Lapier* (1784), 1 Leach, 320; *R.* v. *Macauley* (1783), 1 Leach, 287; *R.* v. *Baker* (1783), *ibid.* 290; *R.* v. *Moore* (1784), *ibid.* 335; *R.* v. *Walls* (1845), 2 Car. & Kir. 214. But where the prosecutor's watch was fastened to a steel chain which went round his neck, and the prisoner stole the watch by jerking and breaking the chain, a conviction for robbery was affirmed by the judges (*R.* v. *Mason* (1820), Russ. & Ry. 419).

(*q*) Fost. 128, approved by the judges in *R.* v. *Donolly* (1779), 1 Leach, 193, 196, 197; 2 East, P. C. 715; see also 2 East, P. C. 711; 1 Hawk. P. C., c. 34, s. 9. But if there is no violence, and the prosecutor states that he did not part with his property from any apprehension of violence to his person or injury to his character, but for some other reason, there is no robbery (*R.* v. *Reane* (1794), 2 Leach, 616; *R.* v. *Fuller* (1820), Russ. & Ry. 408).

(*r*) As where a man with a drawn sword, or other circumstances of terror indicating a felonious intent, begs alms (2 East, P. C. 711).

(*s*) *R.* v. *Blackham* (1787), 2 East, P. C. 711, where the prisoner was attempting to commit a rape upon the prosecutrix and without any demand by him, she gave him money to induce him to desist.

(*t*) *R.* v. *Simons* (1773), 2 East, P. C. 712; *R.* v. *Spencer* (1783), 2 East, P. C. 712; see 1 Hawk. P. C., c. 34, s. 14.

(*a*) *R.* v. *Donolly*, *supra*.

(*b*) *Ibid.*; see *R.* v. *Winkworth* (1830), 4 C. & P. 444.

(*c*) *R.* v. *Reane*, *supra*; *R.* v. *Jones* (1776), 1 Leach, 139; *R.* v. *Donolly*, *supra*; *R.* v. *Hickman* (1783), 1 Leach, 278; *R.* v. *Cannon* (1809), Russ. & Ry. 146; *R.* v. *Egerton* (1819), Russ. & Ry. 375; *R.* v. *Elmstead* (1802), 2 Russell on Crimes, 106; *R.* v. *Stringer* (1842), 2 Mood. C. C. 261; see, however, *R.* v. *Taunton* (1840), 2 Mood. C. C. 118.

(*d*) *R.* v. *Gardner* (1824), 1 C. & P. 479; as to attempts to extort money by threats to accuse of crime, see p. 666, *post*.

(*e*) *R.* v. *Knewland* (1796), 2 Leach, 721, 730.

(*f*) *R.* v. *Edward* (1833), 1 Mood. & R. 257.

has had time to consult another person or to obtain assistance, the offence of robbery is not committed (*g*).

A *bonâ fide* claim of right to the money or goods taken is a good defence to an indictment for robbery (*h*).

The return of the property by the robber will not purge the offence (*i*).

Any property may be the subject of robbery which is capable of being stolen; the value is immaterial, provided it be of any value at all to the prosecutor (*k*). It must be the prosecutor's property and have been in his peaceable possession (*l*).

One or more prisoners may be charged in one indictment with robberies committed upon different persons, if such robberies constituted one entire transaction without an interval of time (*m*).

Verdict of assault with intent to rob.

1331. If upon the trial of a person upon an indictment for robbery it appears to the jury that he did not commit robbery, but that he committed an assault with intent to rob, they may find him guilty of and he may be punished for the latter offence. No person so tried is liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried (*n*).

Upon an indictment for an assault with intent to rob the prisoner cannot be convicted of a common assault (*o*).

Upon an indictment for robbery, or for larceny from the person, the prisoner may be convicted of simple larceny (*p*).

Assault with intent to rob.

1332. Whoever assaults any person with intent to rob is guilty of felony and liable to penal servitude for not more than five or not less than three years, or imprisonment with or without hard labour for not more than two years (*q*).

(*g*) *R.* v. *Jackson* (1802), 1 Leach, 193, n.

(*h*) *R.* v. *Hall* (1828), 3 C. & P. 409; *R.* v. *Hemmings* (1864), 4 F. & F. 50, where the prisoner had assaulted the prosecutor, who was his debtor, and so obtained a cheque from him, and it was held not to be robbery; see also *R.* v. *Boden* (1844), 1 Car. & Kir. 395.

(*i*) 1 Hawk. P. C., c. 34, s. 2; *R.* v. *Peat* (1781), 1 Leach, 228.

(*k*) *R.* v. *Bingley* (1833), 5 C. & P. 602.

(*l*) *R.* v. *Phipoe* (1795), 2 Leach, 673, where the prosecutor was compelled to give a promissory note, the paper on which it was written being the property of the prisoner, and this was held not to be robbery. Such cases are now met by the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 48, p. 667, *post*.

(*m*) *R.* v. *Giddins* (1842), Car. & M. 634, where the indictment contained only one count.

(*n*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 41. But if a count for an assault with intent to rob is added to an indictment for robbery, the prosecution may be required to elect upon which count they will proceed (*R.* v. *Gough* (1831), 1 Mood. & R. 71).

(*o*) *R.* v. *Woodhall* (1872), 12 Cox, C. C. 240.

(*p*) 2 Hale, P. C. 302.

(*q*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 42; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The indictment must allege either an intent to rob, or an intent to violently steal (*R.* v. *Monteth* (1795), 2 Leach, 702; *R.* v. *Huxley* (1842), Car. & M. 596). There need be no actual demand for money or goods (*R.* v. *Trusty* (1783), 1 East, P. C. 418; *R.* v. *Sharwin* (1785), 1 East, P. C. 421). An assault coupled with a threat to accuse of unnatural practices with a view to extort money is an assault with intent to rob (*R.* v. *Stringer* (1842), 2 Mood. C. C. 261). As to the effect of a claim of right to the goods or money demanded, see *R.* v. *Boden*, *supra*; as to what amounts to an assault, p. 606, *ante*.

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Robbery etc. by person armed with weapon.

1333. Everyone is by statute guilty of felony (1) who, being armed with any offensive weapon or instrument, robs, or assaults with intent to rob, any person, or (2) who, together with one or more other persons, robs, or assaults with intent to rob, any person, or (3) who robs any person and, at the time of, or immediately before, or immediately after such robbery, wounds, beats, strikes, or uses any other personal violence to any person (*r*).

The punishment for such offence is penal servitude for life (*s*); the offender may also be sentenced to be once, twice, or thrice privately whipped, provided (1) that in the case of a male whose age does not exceed sixteen years the number of strokes at each whipping must not exceed twenty-five, and the instrument used must be a birch rod; (2) that in the case of any other offender the number of strokes at each whipping must not exceed fifty; (3) that the court must in each case specify the number of strokes to be inflicted and the instrument to be used; (4) that no whipping shall take place after the expiration of six months from the passing of the sentence; and (5) that in the case of a person sentenced to penal servitude the whipping must be inflicted before he is removed to a convict prison (*t*).

Stealing from the person.

1334. It is by statute (*a*) a felony to steal any chattel, money, or valuable security from the person.

The punishment is penal servitude for not more than fourteen or not less than three years, or imprisonment with or without hard labour for not more than two years (*b*).

The property stolen must have been completely removed from the person of the prosecutor. An asportation sufficient to constitute simple larceny (*c*) is not necessarily sufficient to support an indictment for stealing from the person (*d*); but if the property is temporarily, though but for one moment, in the prisoner's possession, he may be convicted of this offence (*e*).

SUB-SECT. 6.—*Extortion by Threats.*

Demanding money etc. by threatening letter.

1335. It is by statute (*f*) a felony to send, deliver, or utter, or directly or indirectly to cause to be received, knowing the contents

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(*r*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 43.

(*s*) *I bid.* This offence is not triable at quarter sessions.

(*t*) Garrotters Act, 1863 (26 & 27 Vict. c. 44), s. 1. The provisions of this Act also apply to attempts to choke or strangle with intent to commit any indictable offence punishable under the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 21, p. 602, *ante*.

(*a*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 40.

(*b*) *I bid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*c*) See p. 630, *ante*.

(*d*) *R.* v. *Thompson* (1825), 1 Mood. C. C. 78, where the prisoner having lifted a pocket-book partly out of the prosecutor's pocket, it was held that, although guilty of simple larceny, he had been wrongly convicted of larceny from the person. The ruling in this case was disapproved by JERVIS, C.J., in *R.* v. *Simpson* (1854), Dears. C. C. 421, 424.

(*e*) *R.* v. *Lapier* (1784), 1 Leach, 320, where an earring torn from a lady's ear dropped in her hair; *R.* v. *Simpson, supra*, watch and chain taken, but a key on the chain caught in the prosecutor's clothes and prevented an entire removal.

(*f*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 44.

thereof, any letter or writing demanding of any person with menaces, and without any reasonable or probable cause (*g*), any property (*h*), chattel, money, valuable security (*i*), or other valuable thing.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years, and if the offender is a male under sixteen years of age, a whipping may be added (*k*).

The menaces may be of duress or of other personal violence, or of great injury (*l*), or to accuse the prosecutor of misconduct, even though not amounting to an offence against the criminal law (*m*). They must be of such a nature as to unsettle the mind of the person to whom they are made, and take away that element of free voluntary action which alone constitutes consent (*n*); but if the threats are such as ought not to influence anybody, they will not support an indictment (*o*).

If the title to the property demanded is in dispute between the parties, a threat of personal violence if the property is not given up does not constitute the offence, if the prisoner believed he had a legal right to what he demanded (*p*).

Whether a document contains menaces is a question for the jury and not for the judge, unless the judge holds that it can by no possible construction involve a threat (*q*).

It is immaterial whether the menaces or threats be of violence, injury, or accusation to be caused or made by the offender or by any other person (*r*).

As the offence consists in sending or causing the letter to be sent, an admission by the prisoner that he wrote it is not without further evidence sufficient to warrant a conviction (*s*).

To leave such a letter where it is likely to be found by the person whom it is intended to threaten is a sufficient sending (*t*).

(*g*) The words "reasonable or probable cause" apply to the money demanded, not to the truth of an accusation constituting the threat (*R.* v. *Hamilton* (1843), 1 Car. & Kir. 212); see also *R.* v. *Miard* (1844), 1 Cox, C. C. 22.

(*h*) For definition of "property," see p. 684, *post*.

(*i*) For definition of "valuable security," see p. 642, *ante*.

(*k*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 44; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*l*) *R.* v. *Smith* (1849), 1 Den. 510, 514.

(*m*) *R.* v. *Tomlinson*, [1895] 1 Q. B. 706, C. C. R.; *R.* v. *Chalmers* (1867), 10 Cox, C. C. 450, C. C. R.; as to threatening to accuse of a crime, see ss. 46, 47, and p. 666, *post*.

(*n*) *R.* v. *Walton* (1863), Le. & Ca. 288, 298.

(*o*) *R.* v. *Tomlinson*, *supra*, at p. 710.

(*p*) *R.* v. *Heming* (1799), 2 East, P. C. 1116; *R.* v. *Walton*, *supra*, at p. 297.

(*q*) *R.* v. *Carruthers* (1844), 1 Cox, C. C. 138; *R.* v. *Walton*, *supra*; *R.* v. *Tomlinson*, *supra*.

(*r*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 49. This also applies to the offences punishable under ss. 45, 46, 47, 48 of the Act (see p. 666, *post*).

(*s*) *R.* v. *Howe* (1836), 7 C. & P. 268.

(*t*) *R.* v. *Wagstaff* (1819), Russ. & Ry. 398; *R.* v. *Grimwade* (1844), 1 Den. 30.

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1336. It is by statute (*a*) a felony to demand with menaces (*b*) or by force any property (*c*), chattel, money, valuable security (*d*), or other valuable thing of any person with intent to steal the same.

The punishment for this offence is penal servitude for not more than five or less than three years, or imprisonment with or without hard labour for not more than two years (*e*).

Letter accusing of crime.

1337. It is by statute (*f*) a felony to send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing accusing or threatening to accuse any other person of any crime punishable by law with death or penal servitude for not less than seven years, or of any assault with intent to commit a rape, or of any attempt to commit a rape, or of any infamous crime (*g*) with a view or intent to extort or gain by means of such letter or writing any property, chattel, money, valuable security, or other valuable thing from any person.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years, and in the case of a male under the age of sixteen years a whipping may be added (*h*).

Accusation of crime for the purpose of extortion.

1338. It is by statute (*i*) a felony to accuse or threaten to accuse either the person to whom the accusation or threat is made, or any other person, of any infamous crime (*j*), with the view or intent to extort or gain from the person so accused or threatened to be

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(*a*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 45.

(*b*) As to menaces, see p. 665, *ante*. The fact that the property has been completely obtained by means of the threats is no defence (*R.* v. *Robertson* (1864), Le. & Ca. 483). A threat to imprison upon a fictitious charge is a menace within the meaning of the section (*ibid.*). It is not necessary to prove an actual demand in words if the circumstances show that there was an attempt by the prisoner to extort payment by threats (*R.* v. *Jackson* (1783), 1 Leach, 267). To obtain money by threats, and in particular by the use or threatened use of process of law, was an indictable misdemeanour at common law, provided the threats were of such a nature as to be calculated to overcome a firm and prudent man (*R.* v. *Woodward* (1707), 11 Mod. Rep. 137); but it appears that such threats must have been of personal violence or imprisonment (*R.* v. *Southerton* (1805), 6 East, 126, 140, where it was held that obtaining money by a threat to take proceedings for penalties was not so indictable).

(*c*) For definition of "property," see p. 684, *post*.

(*d*) For definition of "valuable security," see p. 642, *ante*.

(*e*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 45; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions.

(*f*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 46.

(*g*) This expression includes sodomy and bestiality, an assault with intent to commit the same, an attempt to commit the same, and a solicitation, persuasion, promise, or threat offered or made to any person to move or induce him to commit or permit the same (*ibid.*), but it does not include a threat to accuse of indecent conduct with another male person (*R.* v. *Gilgannon* (1899), 63 J. P. 457; see also *R.* v. *Norton* (1838), 8 C. & P. 671). A threat of this kind may, however, amount to a threat to accuse of solicitation to sodomy or of an attempt to commit or permit that offence; see *R.* v. *Cooper* (1849), 3 Cox, C. C. 547; *R.* v. *Bragnell* (1850), 4 Cox, C. C. 402.

(*h*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 46; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*i*) *Ibid.*, s. 47.

(*j*) See note (*g*), *supra*.

accused, or any other person, any property, chattel, money, valuable security, or other valuable thing.

The punishment is the same as that for the last-mentioned offence (*k*).

Nature of threat.

1339. If the defendant intended to extort money by threatening to make an accusation, it is immaterial whether such accusation, if made, would be true or false (*l*). It is not necessary that the threat should be to accuse before a legal tribunal or an officer of the law; it is sufficient if it is to accuse before any third person (*m*). If the object of the threat is to induce the person threatened to buy anything, there is an intent to extort or gain by means of the threat (*n*).

It is for the jury to determine what was the nature of the charge made, and whether the prisoner in fact intended to make, or to threaten to make, an accusation of one of the crimes above mentioned; for this purpose the jury are entitled to consider the whole conduct of the prisoner (*o*).

To prove the intent to extort, evidence may be given of the obtaining of money by the prisoner by making similar accusations on other occasions (*p*), unless the intent to extort is manifest from the nature of the threat used (*q*).

Extorting execution of valuable securities.

1340. Everyone is by statute (*r*) guilty of felony who, with intent to defraud or injure any other person, by any unlawful violence to or restraint of the person of another, or by accusing or threatening to accuse any person of any treason, felony, or infamous crime (*s*), compels or induces any person to execute, make, accept, indorse, alter, or destroy the whole or any part of any valuable security (*t*), or to write, impress, or affix his name or the name of any other person or firm, or the seal of any body, corporate company, or society to any paper or parchment, in order that the same may be afterwards made or converted into or used or dealt with as a valuable security.

The punishment for this offence is penal servitude for life or for

(*k*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 47. This offence is not triable at quarter sessions.

(*l*) *R.* v. *Menage* (1862), 3 F. & F. 310; *R.* v. *Cracknell* (1866), 10 Cox, C. C. 408. But it may be material upon the question whether the intention was only to compound a felony or obtain compensation (*R.* v. *Richards* (1868), 11 Cox, C. C. 43). The prosecutor may be cross-examined as to the truth of the accusation with the object of impeaching his credit, but he cannot be contradicted on this point by other evidence (*R.* v. *Cracknell*, *supra*).

(*m*) *R.* v. *Robinson* (1837), 2 Mood. & R. 14.

(*n*) *R.* v. *Redman* (1865), L. R. 1 C. C. R. 12.

(*o*) *R.* v. *Cooper* (1849), 3 Cox, C. C. 547; *R.* v. *Braynell* (1850), 4 Cox, C. C. 402. In these cases the accusation was only of indecent assault; see also *R.* v. *Kain* (1837), 8 C. & P. 187. So, also, if the meaning of a threatening letter is doubtful or ambiguous, the prosecutor may adduce evidence of facts to show its meaning (*R.* v. *Tucker* (1826), 1 Mood. C. C. 134; *R.* v. *Hendy* (1850), 4 Cox, C. C. 243).

(*p*) *R.* v. *Cooper*, *supra*, at p. 549.

(*q*) *R.* v. *McDonnell* (1850), 5 Cox, C. C. 153.

(*r*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 48.

(*s*) See note (*g*) on p. 666, *ante*.

(*t*) For definition of "valuable security," see p. 642, *ante*. An agreement or promise to pay money for a consideration appearing upon the face of the document is a "valuable security," although it is not a negotiable security (*R.* v. *John* (1875), 13 Cox, C. C. 100).

SECT. 1. Taking Property.

not less than three years, or imprisonment with or without hard labour for not more than ten years (*u*).

Threatening to publish a libel.

1341. It is by statute (*a*) a misdemeanour to threaten to publish a libel with intent to extort money or any valuable thing.

The punishment for this offence is imprisonment with or without hard labour for not more than three years (*b*).

SUB-SECT. 7.—*Burglary.*

Burglary.

1342. Burglary is the breaking and entering the dwelling-house of another person in the night with intent to commit some felony therein, whether such intent be executed or not (*c*).

Burglary is a felony at common law and by statute (*d*). The punishment is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*e*).

Night.

The offence must be wholly committed in the night. If the breaking be effected in the day and the entry in the night, or *vice versâ*, the offence is not burglary (*f*). But if the breaking with intent to commit a felony be on one night and the entry with the like intent on a subsequent night, this is burglary (*g*).

Night is deemed to commence at nine o'clock in the evening of each day and to conclude at six o'clock in the morning of the next succeeding day (*h*).

Dwelling-house.

The place must be a dwelling-house in which a person or his family is in the habit of residing.

It is sufficient if the owner occupies the house for a part only of the year (*i*), or if, having occupied it, he leaves it for a time, with the intention of returning to live in it again (*k*), or if he occupies it by his servants only, who are members of his family, though he himself may never have slept there (*l*).

A house to which the owner has only moved his goods without yet having slept there is not his dwelling-house for this purpose (*m*),

(*u*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 48; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*a*) Libel Act, 1843 (6 & 7 Vict. c. 96), s. 3.

(*b*) *Ibid.* The offence, it seems, is not triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1). See also title LIBEL AND SLANDER.

(*c*) 1 Hawk. P. C., c. 38, s. 1.

(*d*) *Ibid.*

(*e*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 52; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence may be tried at quarter sessions, but if the case appears to be of a grave or difficult nature, the committing magistrate must send it for trial at the assizes (Burglary Act, 1896 (59 & 60 Vict. c. 57)).

(*f*) 1 Hale, P. C. 551. The offence is then housebreaking. If two persons agree to commit a burglary and one alone breaks on one night, and the other enters in his absence on the next night, both are guilty of the whole offence (*R.* v. *Jordan* (1836), 7 C. & P. 432).

(*g*) *Ibid.*; *R.* v. *Smith* (1820), Russ. & Ry. 417.

(*h*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 1.

(*i*) 1 Hawk. P. C., c. 38, s. 11.

(*k*) *R.* v. *Nutbrown* (1750), Fost. 76; *R.* v. *Murry* (1698), 2 East, P. C. 496.

(*l*) *R.* v. *Gibbons* (1821), Russ. & Ry. 442; *R.* v. *Stock* (1810), Russ. & Ry. 185; *R.* v. *Westwood* (1822), *ibid.* 495. But if a mere caretaker is put into premises to protect the goods there, neither the owner nor his family or servants having an intention of living there, the house is not the owner's dwelling-house (*R.* v. *Flannagan* (1810), Russ. & Ry. 187; *R.* v. *Davies* (1800), 2 Leach, 876; *R.* v. *Smith* (1787), 2 Leach, 1019, n.).

(*m*) *R.* v. *Harris* (1795), 2 Leach, 701; *R.* v. *Thompson* (1796), *ibid.* 771.

nor is a house which has only been used by the owner for the purpose of taking his meals, if neither he nor his family have slept there (*n*).

The building must be of a permanent and not merely a temporary nature (*o*).

No building, although within the same curtilage with any dwelling-house, and occupied therewith, is deemed to be part of such dwelling-house, unless there is a communication between such building and dwelling-house, either immediate or by means of a covered and inclosed passage leading from the one to the other (*p*), and the outbuilding, to form part of the dwelling-house, must be held with it by the same owner (*q*).

The ownership of the dwelling-house must be correctly alleged in the indictment (*r*). The owner for this purpose is the person who occupies the premises in his own right for residential purposes, either by himself or his family or servants (*s*).

1343. The breaking which is necessary to constitute burglary may be either actual or constructive. Breaking.

The breaking must be of some part of the house, and not merely of the outer fence or wall of the curtilage, if such wall is not part of the wall of the dwelling-house or does not open into any outbuildings in respect of which burglary can be committed (*t*).

(*n*) *R.* v. *Martin* (1806), Russ. & Ry. 108.

(*o*) So that a tent or booth in a fair or market is not such a *domus mansionalis* wherein burglary may be committed (1 Hale, P. C. 557 ; 1 Hawk. P. C., c. 38, s. 17). But a permanent building of mud and brick in which the prosecutor slept, though only during a fair, was held a sufficient dwelling-house (*R.* v. *Smith* (1833), 1 Mood. & R. 256).

(*p*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 53. As to breaking into outbuildings not so communicating, see s. 55.

(*q*) *R.* v. *Jenkins* (1812), Russ. & Ry. 244.

(*r*) But the court has power to order an amendment in this respect, if any variance appears between the statement in the indictment and the evidence for the prosecution (Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 1, p. 334, *ante*). This is one of the cases in which a local description is necessary; see p. 337, *ante*.

(*s*) *R.* v. *Collett* (1823), Russ. & Ry. 498; *R.* v. *Bridges* (1845), 1 Cox, C. C. 261, where it was held that a tenancy at will was sufficient to constitute ownership. As to the occupation by servants of houses or rooms belonging to their masters, see *R.* v. *Stock* (1810), Russ. & Ry. 185; *R.* v. *Jobling* (1823), Russ. & Ry. 525; *R.* v. *Camfield* (1824), 1 Mood. C. C. 42; *R.* v. *Witt* (1829), 1 Mood. C. C. 248; *R.* v. *Rees* (1836), 7 C. & P. 568; *R.* v. *Jarvis* (1824), 1 Mood. C. C. 7. As to alleging ownership where the occupation is by partners occupying separate parts, see *R.* v. *Jones* (1790), 1 Leach, 537. A club house is not the dwelling-house of the steward, although he resides there (*R.* v. *Ashley* (1843), 1 Car. & Kir. 198). With regard to lodgings, if the owner lives on the premises and there is an interior communication the house must be alleged to be his dwelling-house (*R.* v. *Rogers* (1772), 1 Leach, 90, n. ; 2 Kel. 83, 84; *R.* v. *Sefton* (1811), Russ. & Ry. 202 ; *R.* v. *Gibbons* (1821), Russ. & Ry. 442) ; but if there is no such internal communication, or if the lodging-house keeper does not live on the premises, the part broken into must be described as the dwelling-house of the lodger who occupies it (1 Hale, P. C. 556; *R.* v. *Rogers, supra ; R.* v. *Trapshaw* (1786), 1 Leach, 427 ; *R.* v. *Carrell* (1782), 1 Leach, 237). The indictment need not allege the ownership of any goods which may have been stolen ; it is sufficient to allege that the goods were in the house (*R.* v. *Clarke* (1844), 1 Car. & Kir. 421).

(*t*) *R.* v. *Bennett* (1815), Russ. & Ry. 289 (door in a fence opening into a yard) ; *R.* v. *Davis* (1817), Russ. & Ry. 322 (area gate).

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Thus it is not burglary to break chests in a house (*a*), or external fixtures (*b*), or internal fixtures or cupboards (*c*).

It is an actual breaking either to break with the purpose of entering any such part of the house as is mentioned above, or to open with the like purpose either an outer or an inner (*d*) door or window which is latched or otherwise fastened, or which without being fastened is completely closed (*e*).

It is not a breaking of a house to open wider a door or window which is already partly open (*f*), or to enter through a hole in a cellar window (*g*), or through an existing hole in the roof (*h*). Lifting a cellar-flap held down by its own weight is a breaking (*i*).

There is a breaking by construction of law when an entrance to the house is obtained by fraud (*k*), or by conspiracy (*l*), or by threats (*m*), although no part of the house is actually broken.

(*a*) 1 Hale, P. C. 553, 554.

(*b*) *R.* v. *Paine* (1834), 7 C. & P. 135 (shutter box).

(*c*) Fost. 108, 109; 2 East, P. C. 489.

(*d*) Even though the entering into the house has been through an open door or window, if an inner door is afterwards broken (1 Hale, P. C. 553; 1 Hawk. P. C., c. 38, s. 4; *R.* v. *Johnson* (1786), 2 East, P. C. 488).

(*e*) 1 Hale, P. C. 552; *R.* v. *Foster* (1828), 1 Lew. C. C. 33; *R.* v. *Owen* (1827), 1 Lew. C. C. 35; *R.* v. *Lawrence* (1830), 4 C. & P. 231; *R.* v. *Jordan* (1836), 7 C. & P. 432; *Pugh* v. *Griffith* (1838), 7 Ad. & El. 827, 836 (lifting latches); *R.* v. *Haines* (1821), Russ. & Ry. 451; *R.* v. *Hyams* (1836), 7 C. & P. 441; *R.* v. *Hall* (1818), Russ. & Ry. 355; *R.* v. *Robinson* (1831), 1 Mood. C. C. 327; *R.* v. *Perkes* (1824), 1 C. & P. 300 (opening windows). To pick a lock is a breaking (1 Hale, P. C. 552; *Re George and Goldsmiths and General Burglary Insurance Association*, [1898] 2 Q. B. 137, 139); so also is to get down a chimney (1 Hale, P. C. 552; 2 East, P. C. 485; *R.* v. *Brice* (1821), Russ. & Ry. 450).

(*f*) *R.* v. *Smith* (1827), 1 Mood. C. C. 178. But to put the hand through an existing hole in a window, and so to undo the window fastening, is a sufficient breaking, whether or not the hole be enlarged for that purpose (*R.* v. *Robinson* (1831), 1 Mood. C. C. 327; *Ryan* v. *Shilcock* (1851), 7 Exch. 72, 76).

(*g*) *R.* v. *Lewis* (1827), 2 C. & P. 628.

(*h*) *R.* v. *Spriggs* (1834), 1 Mood. & R. 357.

(*i*) *R.* v. *Russell* (1833), 1 Mood. C. C. 377; *R.* v. *Brown* (1799), 2 East, P. C. 487. There is, however, some authority the other way; see *R.* v. *Lawrence* (1830), 4 C. & P. 231, BOLLAND, B.; *R.* v. *Callan* (1809), Russ. & Ry. 157, in which case twelve judges were equally divided.

(*k*) As where lodgings are taken with a design to rob the house (*R.* v. *Cassey* (1666), Kel. 62; 1 Hawk. P. C., c. 38, s. 9); or by fraudulently raising the hue and cry and so obtaining entrance with a constable into the house (Kel. 82; 1 Hawk. P. C., c. 35, s. 10; see also *R.* v. *Gascoigne* (1783), 1 Leach, 280, 284); or by pretence of business (*R.* v. *Le Mott* (undated), Kel. 42; 2 East, P. C. 485); or by enticing away a servant (*R.* v. *Hawkins* (1704), 2 East, P. C. 485); or by obtaining possession by a fraudulent action at law (*R.* v. *Farre* (1665), Kel. 43).

(*l*) *R.* v. *Farre*, *supra*; as, *e.g.*, with the owner's servants (*R.* v. *Cornwall* (1730), 2 Stra. 881; 2 East, P. C. 486); where, however, a servant by arrangement with the owner pretended to connive with the prisoner and let him into the house in order that he might be arrested, the prisoner was held not to have committed burglary, though, as there had been an asportation, he was convicted of larceny in the dwelling-house (*R.* v. *Johnson* (1841), Car. & M. 218).

(*m*) *R.* v. *Swallow* (1813), 2 Russell on Crimes, 6th ed., 8. But only if the house were opened in consequence of the threats and an entry effected; if under the fear of the threats the owner throws money out of the door or window, the offence is not burglary, though it will be robbery if the money is taken up (2 East, P. C. 486).

A person who enters the dwelling-house of another with intent to commit any felony therein, or who, being in such dwelling-house, commits any felony therein, and in either case breaks out of the dwelling-house in the night, is deemed guilty of burglary (*n*).

1344. To constitute the crime of burglary there must be an entry of the premises as well as a breaking, and the entry must be consequent on the breaking (*o*). Entry.

The least entry either with the whole or with but part of the body will satisfy the requirement of an entry (*p*); so also will the insertion of any instrument, provided it be introduced for the purpose not merely of making an entry, but also for the purpose of extracting property (*q*); so also will the insertion of any weapon, if for the purpose of killing the inmates of the house (*r*).

If there was a breaking, but there is no sufficient evidence of an entry, the prisoner may be convicted of an attempt to commit a burglary (*s*).

1345. The intent of the breaking and entering must be to commit either a common law or statutory felony. Intent.

The particular felony intended to be committed must be alleged in the indictment and must be proved as laid (*t*), but different

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(*n*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 51. The section applies, although the prisoner was lawfully in the house, if he committed a felony there (*R.* v. *Wheeldon* (1839), 8 C. & P. 747). As in the case of a burglarious breaking in, it will be sufficient if he has broken out by merely lifting a latch (*ibid.*). But in *R.* v. *Lawrence* (1830), 4 C. & P. 231, BOLLAND, B., held that, although unlocking and opening the hall-door was a sufficient breaking out, lifting a trap-door over a cellar which was kept down by its own weight was not (*sed quære*, see p. 670, note (*i*), *ante*). In *R.* v. *M'Kearney* (1829), Jebb, C. C. 99, it was held by the judges that the prisoner, who had only put his head out of a skylight, which he had broken, and had then fallen back into the room, had broken out.

(*o*) *R.* v. *Davis* (1854), 6 Cox, C. C. 369; but not necessarily on the same night (p. 668, *ante*); and see *supra*.

(*p*) 1 Hale, P. C. 553, 555; 1 Hawk. P. C., c. 38, s. 7; *R.* v. *Gibbons* (1752), Fost. 107; 2 East, P. C. 490; *R.* v. *Bailey* (1818), Russ. & Ry. 341 (where the hand was put between the glass of an outer window and an inner shutter); *R.* v. *Davis* (1823), Russ. & Ry. 499 (where part of the prisoner's finger went through a window).

(*q*) 1 Hale, P. C. 555; *R.* v. *Hughes* (1785), 1 Leach, 406; *R.* v. *Roberts* (1828), Carrington's Supplement, 293; *R.* v. *Rust* (1828), 1 Mood. C. C. 183; *R.* v. *O'Brien* (1850), 4 Cox, C. C. 398.

(*r*) 1 Hawk. P. C., c. 38, s. 7; *R.* v. *O'Brien*, *supra*. It is doubtful whether firing a loaded gun into a house, the gun being entirely outside, is a sufficient entry (see 1 Hale, P. C. 555; 1 Hawk. P. C., c. 38, s. 7; 2 East, P. C. 490).

(*s*) *R.* v. *Spanner* (1872), 12 Cox, C. C. 155.

(*t*) 3 Co. Inst. 65; 1 Hawk. P. C., c. 38, ss. 36, 38; *R.* v. *Knight* (1781), 2 East, P. C. 510, 511. Thus an indictment lies for burglary with intent to commit a rape, though rape was not a felony at common law, but was made so by statute (*R.* v. *Gray* (1721), 1 Stra. 481). Although the intent should be expressly alleged in the indictment, it has been held that an allegation that a felony had been committed was, if the commission of such felony were proved, but not otherwise, sufficient, although the intention was not alleged (*R.* v. *Furnival* (1821), Russ. & Ry. 445). In practice it is usual to allege both the intent to commit the particular felony and also, if such be the case, that it was committed. If the intent was to steal the goods then in the house, it should be so alleged; it is not necessary to state the owner of the goods (*R.* v. *Lawes* (1843), 1 Car. & Kir. 62, *R.* v. *Clarke* (1844), 1 Car. & Kir. 421).

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intents may be alleged in different counts of the same indictment (*a*).

An intent to commit a misdemeanour or trespass is insufficient to support an indictment for burglary (*b*). It is immaterial whether the intended felony was committed or not.

Evidence.

1346. Where several burglaries are committed on one night and the circumstances are intermixed, evidence of the details of each burglary may be given upon the trial of the prisoner for any one of them (*c*).

Verdict on indictment for burglary.

1347. If upon the trial of an indictment for burglary it appears that the house was not a dwelling-house, or that the breaking and entering were not in the night, or that there is no sufficient evidence of the entry, the prisoner may be convicted of house-breaking, or, if the indictment alleges a stealing and the goods stolen from the dwelling-house amounted to £5 in value, of larceny in a dwelling-house to that amount, or, if the indictment alleges a stealing, of simple larceny (*d*).

Upon an indictment of two persons for burglary and larceny one may be convicted of the whole offence and the other of the larceny only (*e*).

SUB-SECT. 8.—*Housebreaking.*

House-breaking.

1348. It is by statute (*f*) a felony to break and enter (*g*) any dwelling-house (*h*), school-house, shop (*i*), warehouse (*k*), or counting

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(*a*) *R.* v. *Thompson* (1781), 2 East, P. C. 515.

(*b*) 3 Co. Inst. 65 ; *R.* v. *Dobbs* (1770), 2 East, P. C. 513.

(*c*) *R.* v. *Cobden* (1862), 3 F. & F. 833. "If crimes do so intermix, the court must go through the detail. I remember a case where a man committed three burglaries in one night; he took a shirt at one place and left it at another ; and they were all so connected that the court went through the history of the three different burglaries" (*R.* v. *Wylie* (1804), 1 Bos. & P. (N. R.) 92, *per* Lord ELLENBOROUGH, C.J., at p. 94).

(*d*) *R.* v. *Withal* (1772), 1 Leach, 88 ; *R.* v. *Compton* (1828), 3 C. & P. 418 ; *R.* v. *Brookes* (1842), Car. & M. 543 ; but not of a distinct larceny committed on a previous day (*R.* v. *Vandercomb* (1796), 2 Leach, 708).

(*e*) *R.* v. *Butterworth* (1823), Russ. & Ry. 520.

(*f*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 56.

(*g*) As to what amounts to a breaking and entering, see pp. 669, 671, *ante*. Breaking open or opening the inner door of a shop, communicating with an adjoining house under the same roof, is a breaking of the shop (*R.* v. *Wenmouth* (1860), 8 Cox, C. C. 348).

(*h*) As to what is a dwelling house, see p. 668, *ante*.

(*i*) It appears to be doubtful whether the shop must be a place for the sale of articles, or whether a workshop (*e.g.*, a blacksmith's shop or forge) is within the section. In *R.* v. *Sanders* (1839), 9 C. & P. 79, ALDERSON, B., held it was not, as also did TINDAL, C.J., in *R.* v. *Chapman* (1843), 7 J. P. 132 ; but in *R.* v. *Carter* (1843), 1 Car. & Kir. 173, Lord DENMAN, C.J., held that it was, and declined to follow *R.* v. *Sanders*, *supra*. As the word "shop" is derived from A.S. *sceoppa*, which meant a booth or shed for trade or work, and as the modern ordinary usage is in conformity with that meaning, it is submitted that the view of Lord DENMAN was correct. A photographer who, without making any structural alteration in a private house, exhibited photographs outside and used the ground floor for the exhibition of photographs and the sale of albums, cases and frames, the door being kept open by day, was held to have converted the house into a shop (*Wilkinson* v. *Rogers* (1864), 2 De G. J. & Sm. 62).

(*k*) A "warehouse" is a place where goods are stowed or kept which are not

house (*l*) and commit any felony (*m*) therein, or being in any such building to commit any felony therein and to break out of the same.

The punishment is penal servitude for not more than fourteen or for not less than three years, or imprisonment with or without hard labour for not more than two years (*n*).

Breaking with intent.

1349. It is by statute (*o*) a felony to break and enter (*p*) any dwelling-house (*q*), church, chapel, meeting-house, or other place of divine worship (*r*), or any building within the curtilage, school-house, shop, warehouse or counting-house with intent to commit any felony therein.

The punishment is penal servitude for not more than seven or for not less than three years, or imprisonment with or without hard labour for not more than two years (*s*).

Entering with intent.

1350. It is by statute (*t*) a felony to enter any dwelling-house (*a*) in the night (*b*) with intent to commit any felony therein.

The punishment is penal servitude for not more than seven or not less than three years, or imprisonment with or without hard labour for not more than two years (*c*).

Buildings within curtilage.

1351. It is by statute (*d*) a felony to break and enter any building, and to commit any felony therein, such building being within the

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immediately wanted for sale, and a cellar under a shop, and used for that purpose, is a warehouse (*R.* v. *Hill* (1843), 2 Mood. & R. 458).

(*l*) A "counting-house" is a part of a commercial establishment in which the book-keeping, correspondence etc. are carried on. But it has been held that a solicitor's office may be a counting-house (*Re Creeke* (1863), 11 W. R. 234). A weighing room at a factory in which accounts of weights and workmen's times were kept, and where wages were paid, was held to be a counting-house within the meaning of the section (*R.* v. *Potter* (1851), 2 Den. 235); see also *Piercy* v. *Maclean* (1870), L. R. 5 C. P. 252, 256, 261.

(*m*) If the felony committed in the house is alleged to be larceny there must be some evidence of asportation (as to which, see p. 630, *ante*); but it need not be shown that the goods were removed from the house (*R.* v. *Amier* (1834), 6 C. & P. 344). If the indictment alleges a larceny, it must state the goods which were stolen, and where proof of the larceny failed on account of the goods specified not being in the house at the time it was held that the prisoner could not be convicted on that indictment of breaking and entering the house and attempting to steal (*R.* v. *M'Pherson* (1857), Dears. & B. 197, where the goods had been previously stolen by another thief); but as to attempts of this kind, see p. 259, *ante*.

(*n*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 56; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions.

(*o*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 57.

(*p*) As to what amounts to breaking and entering, see pp. 669, 671, *ante*; and see note (*m*), *supra*.

(*q*) As to what is a dwelling-house, see p. 668, *ante*.

(*r*) As to sacrilege, see p. 675, *post*.

(*s*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 57; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions.

(*t*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 54.

(*a*) As to what is a dwelling-house, see p. 668, *ante*.

(*b*) For definition of "night," see p. 668, *ante*.

(*c*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 54; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions.

(*d*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 55.

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curtilage (*e*) of a dwelling-house (*f*) and occupied therewith, but not being part thereof (*g*), or being in any such building to commit any felony therein and to break out of the same.

The punishment is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*h*).

Stealing in dwelling-house.

1352. It is by statute (*i*) a felony (1) to steal in any dwelling-house (*k*) any chattel, money or valuable security (*l*) to the value in the whole of £5 or more (*m*), or (2) to steal in a dwelling-house any chattel, money, or valuable security to any value, and by any menace or threat to put anyone being therein in bodily fear (*n*).

The punishment for such offence is penal servitude for not more than fourteen years nor less than three years, or imprisonment with or without hard labour for not more than two years (*o*).

Being found armed by night.

1353. Everyone is by statute (*p*) guilty of a misdemeanour (1) who is found by night (*q*) armed with any dangerous or offensive

(*e*) If the building within the curtilage has a communication between itself and the dwelling-house, either immediate or by means of a covered and inclosed passage leading from the one to the other, it is a part of the dwelling-house, and the offence is burglary (see Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 53, and p. 669, *ante*). "The curtilage is a small court, yard, garth, or piece of ground attached to a dwelling-house, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwelling-house and its outbuildings" (New English Dictionary, Murray). The outer fence of the curtilage not opening into any of the buildings was no part of the dwelling-house, even before the Larceny Act, 1861 (24 & 25 Vict. c. 96) (*R.* v. *Bennett* (1815), Russ. & Ry. 289); nor was an area gate, if there was a door between the area and the house (*R.* v. *Davis* (1817), Russ. & Ry. 322). East apparently considered the words "within the curtilage" as synonymous with "within the same common fence" (2 P. C. 493); and see *R.* v. *Westwood* (1822), Russ. & Ry. 495.

(*f*) As to what is a dwelling-house, see p. 668, *ante*.

(*g*) As to what is "part thereof," see Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 53.

(*h*) *Ibid.*, s. 55; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions.

(*i*) Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 60, 61.

(*k*) The dwelling-house must be such a house that burglary could be committed in it (2 East, P. C. 499, 644). As to what is such a dwelling-house, see p. 668, *ante*. A person may be convicted of this offence although he himself is the owner of the dwelling-house (*R.* v. *Bowden* (1843), 2 Mood. C. C. 285).

(*l*) For definition of "valuable security," see p. 642, *ante*.

(*m*) If the indictment charges only an attempt to steal goods in the dwelling-house it need not specify any particular goods (*R.* v. *Johnson* (1864), Le. & Ca. 489). The goods must be under the protection of the house, *i.e.*, deposited there for safe custody; it is not sufficient that they are on the person of one who is in the house, or that they are under the eye or personal care of someone who happens to be there (*R.* v. *Owen* (1792), 2 East, P. C. 645; *R.* v. *Castledine* (1792), *ibid.*; *R.* v. *Watson* (1794), 2 Leach, 640, 643, n.; *R.* v. *Campbell* (1792), 2 Leach, 564; *R.* v. *Taylor* (1820), 2 Russ. & Ry. 418; *R.* v. *Carroll* (1825), 1 Mood. C. C. 89). The question whether goods are under the protection of the house or in the personal care of the owner is one for the judge and not for the jury (*R.* v. *Thomas* (1827), Carrington, Supplement, 295).

(*n*) The indictment must state that the person in the house was put in fear by the prisoner (*R.* v. *Etherington* (1795), 2 Leach, 671).

(*o*) Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 60, 61; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions.

(*p*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 58.

(*q*) For definition of "night," see p. 668, *ante*.

weapon or instrument, with intent to break or enter into any dwelling-house or other building whatsoever, and to commit any felony therein (*r*), or (2) who is found by night having in his possession (*s*) without lawful excuse (the proof of which excuse lies on such person) any picklock key, crow, jack, bit, or other implement of housebreaking (*t*), or (3) who is found by night having his face blackened or otherwise disguised with intent to commit any felony, or (4) who is found by night in any dwelling-house or other building whatsoever with intent to commit any felony therein.

The punishment for this offence is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years (*a*); if the prisoner has been previously convicted either of felony or of such misdemeanour, he may be sentenced to penal servitude for ten years (*b*).

Sacrilege.

1354. It is by statute (*c*) a felony to break and enter (*d*) any church (*e*), chapel (*f*), meeting-house, or other place of divine worship and commit any felony therein, or being in any such place to commit any felony therein and break out of the same.

The punishment is penal servitude for life or for not less than

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(*r*) An indictment under this part of the section must allege the particular house or building intended to be broken or entered, and (probably) the particular felony intended to be committed (*R.* v. *Jarrald* (1863), Le. & Ca. 301).

(*s*) Where several persons are engaged in one party with the common purpose of housebreaking, the possession of implements of housebreaking by one is the possession of all (*R.* v. *Thompson* (1869), 11 Cox, C. C. 362, C. C. R.).

(*t*) Any implement capable of being used for the purpose of housebreaking is an implement of housebreaking within the meaning of the statute, though it may also be capable of an innocent use, *e.g.*, a key or a chisel, if the jury find that the prisoner had it in his possession for the purpose of housebreaking (*R.* v. *Oldham* (1852), 2 Den. 472). In the section as printed by the King's printer there is no comma after the word "picklock" (see *R.* v. *Oldham*, *supra*, 474). The comma is inserted in Greaves' Criminal Consolidation Act, and in 2 Russell on Crimes, 50; but "picklock key" is a phrase in use (see Murray, New English Dictionary, VII., 827). In an indictment under this part of the section, it is not necessary to allege an intent to commit a felony (*R.* v. *Bailey* (1853), Dears. C. C. 244).

(*a*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 58; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1; Larceny Act, 1861, s. 117. This offence is triable at quarter sessions.

(*b*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 59; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*c*) *Ibid.*, s. 50.

(*d*) As to what amounts to a breaking and entering, see pp. 669, 671, *ante*.

(*e*) A vestry formed out of what had formerly been the church porch was held to be part of the church (*R.* v. *Evans* (1842), Car. & M. 298); a church tower, to which access is gained through the church, is part of the church (*R.* v. *Wheeler* (1829), 3 C. & P. 585); neither the ownership of the church, if it is a parish church, nor, if the felony committed therein was larceny, the ownership of the goods, need, it appears, be stated (*R.* v. *Nicholas* (1845), 1 Cox, C. C. 218); but if the goods appertain to the church they may be alleged to be the goods of the parishioners or, in the case of a chapel-of-ease, to be the goods of such and such a person, *i.e.*, the person who has the custody of them (2 East, P. C. 651); a fixed offertory box and its contents may be alleged to be the property of the vicar and churchwardens, giving their names (*R.* v. *Wortley* (1846), 1 Den. 162).

(*f*) "Chapel" includes only a chapel of the Church of England (*R.* v. *Richardson* (1834), 6 C. & P. 335; *R.* v. *Nixon* (1836), 7 C. & P. 442, decided on stat. 7 & 8 Geo. 4, c. 29, s. 10, which did not in terms mention meeting-houses). A dissenting chapel should be described in an indictment as a meeting-house.

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three years, or imprisonment with or without hard labour for not more than two years (*g*).

SUB-SECT. 9.—*Receiving Stolen Goods.*

Receiving stolen goods.

1355. Receiving goods knowing them to have been stolen is a common law misdemeanour punishable by fine and imprisonment (*h*).

Statutory offence.

1356. By statute (*i*) everyone is guilty of felony who receives any chattel, money, valuable security (*k*), or other property (*l*) whatsoever the stealing, taking, extorting, obtaining, embezzling or otherwise disposing of which amounts to a felony (*m*), knowing the same to have been feloniously stolen, taken, extorted, obtained, embezzled or disposed of.

A person charged with this offence may be indicted and convicted either as an accessory after the fact or for a substantive felony (*n*), and in the latter case whether the principal felon has or has not been previously convicted or is or is not amenable to justice (*o*).

The punishment for such receiver, however convicted, is penal servitude for not more than fourteen or not less than three years, or

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(*g*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 50; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*h*) 1 Hale, P. C. 620; the bare reception of the goods with a guilty knowledge did not render the receiver an accessory after the fact, as it was the goods, and not the thief, which were received and harboured; but in Hale's opinion (*ibid.*), if the thief came himself to the receiver and delivered the goods to him to keep for him, or if the receiver took the goods to facilitate the thief's escape, or to furnish him with supplies out of them, and so supplied him, this would make the receiver an accessory after the fact.

(*i*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 91.

(*k*) For definition of "valuable security," see p. 642, *ante*.

(*l*) For definition of "property," see p. 684, *post*.

(*m*) *I.e.*, either at common law or by virtue of the Larceny Act, 1861 (24 & 25 Vict. c. 96); as to what may be the subject of larceny, see p. 636 *et seq.*, *ante*.

(*n*) *I.e.*, for receiving the stolen goods well knowing at the time when he received them that they had been feloniously stolen; in such an indictment the name of the thief, if it is not known, need not be alleged (*R.* v. *Thomas* (1766), 2 East, P. C. 781; *R.* v. *Baxter* (1792), 2 East, P. C. 781; *R.* v. *Jervis* (1833), 6 C. & P. 156). Where, upon an indictment against one person for stealing and another for receiving the goods "so feloniously stolen as aforesaid," the person alleged to be the thief was acquitted, PATTESON, J., held that the receiver could not be convicted, although the goods were proved to have been stolen by someone (*R.* v. *Woolford* (1834), 1 Mood. & R. 384); but where an indictment alleged in the first two counts that the prisoner stole the goods of H., and in the third count that he had received the same goods "so as aforesaid feloniously stolen," and the jury acquitted him on the first two counts, but convicted him on the third, the court upheld the conviction, but without purporting to overrule *R.* v. *Woolford*, *supra* (*R.* v. *Craddock* (1850), 2 Den. 31; see also *R.* v. *Huntley* (1860), Bell, C. C. 238 (where, upon similar facts to those in *R.* v. *Craddock*, *supra*, the court held that the words "so as aforesaid feloniously stolen" may be construed to mean simply "stolen goods," and that the words "so as aforesaid" were an immaterial averment).

(*o*) If after the receiver has been convicted the principal is tried and acquitted, the conviction of the receiver will still stand (*R.* v. *Hughes* (1860), Bell, C. C. 242, 248).

imprisonment with or without hard labour for not more than two years, and, if the offender is a male under the age of sixteen, a whipping; but no person, in whatever manner he has been tried for receiving, is liable to be prosecuted a second time for the same offence (*p*).

Receiving property not feloniously taken.

1357. Everyone is by statute (*q*) guilty of a misdemeanour who receives any chattel, money, valuable, security, or other property, the stealing, taking, obtaining (*r*), converting, or disposing whereof is made a misdemeanour by the Larceny Act, 1861 (*s*), or the Larceny Act, 1896 (*t*), or the Larceny Act, 1901 (*u*), knowing it to have been unlawfully stolen, taken, obtained, converted or disposed of.

A person charged with this offence may be indicted and convicted thereof whether the principal has or has not been previously convicted, or is or is not amenable to justice.

The punishment is penal servitude for not more than seven or not less than three years, or imprisonment with or without hard labour for not more than two years, and if the offender is a male under the age of sixteen he may be sentenced to a whipping (*a*).

Indictment for receiving.

1358. In an indictment for feloniously stealing (*b*) any property a count or several counts may be added for feloniously receiving such property or any part of it (*c*) knowing it to have been stolen. The prosecutor is not to be put to his election, and the jury may find a verdict of guilty either of stealing the property or of receiving it knowing it to have been stolen, or that some of the prisoners named in the indictment were guilty of the one offence and some of the other (*d*).

Any number of receivers at different times of the stolen property or parts of it may be charged with substantive felonies in the same indictment, and may be tried together, although the thief is not

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(*p*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 91; see also the Accessories and Abettors Act, 1861 (24 & 25 Vict. c. 94), s. 3; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*q*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 95.

(*r*) An indictment for receiving goods obtained by false pretences must allege that they were obtained by false pretences; it is not sufficient to allege that they were "unlawfully obtained, taken, and carried away" (*R.* v. *Wilson* (1838), 2 Mood. C. C. 52); but the particular false pretences need not be alleged in the indictment (*Taylor* v. *R.*, [1895] 1 Q. B. 25).

(*s*) 24 & 25 Vict. c. 96.

(*t*) 59 & 60 Vict. c. 52. See p. 680, *post*, as to this Act, which is to have effect as part of the Larceny Act, 1861 (24 & 25 Vict. c. 96).

(*u*) 1 Edw. 7, c. 10; see p. 660, *ante*, as to this Act, which is to have effect as part of the Larceny Act, 1861 (24 & 25 Vict. c. 96).

(*a*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 95; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*b*) The same applies where the taking or obtaining is a misdemeanour, no express provision to this effect being necessary as the receiving in such a case is only a misdemeanour; see *supra*.

(*c*) But where an indictment for stealing certain goods contains a count for receiving those and other goods the prosecution will be required to elect upon which charge they will proceed (*R.* v. *Ward* (1860), 2 F. & F. 19). The count for receiving must allege that the money or goods charged to have been received are the same or part of the same as those alleged in the first count to have been stolen (*R.* v. *Sarsfield* (1852), 6 Cox, C. C. 12, C. C. R. (Ir.)).

(*d*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 92.

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included in the indictment or is not in custody or amenable to justice (*e*).

If upon the trial of two or more persons indicted for jointly receiving it is proved that one or more of them separately received any part of the property, the jury may convict such of them as are proved to have received such part (*f*).

A receiver may be tried in any place in which he has or has had any of the property in his possession, or where the principal may be tried (*g*).

Possession.

1359. A receiving imports possession, and there must be proved to have been a possession by the accused, either actual or constructive (*h*), and a control over the goods. The possession of the receiver must be distinct from that of the thief, so that the mere receiving a thief with stolen goods in his possession does not alone constitute a man a receiver of the goods (*i*). A claim made to the goods is not evidence of possession or receiving (*j*). It is unnecessary to prove a manual possession of the goods by the prisoner; it is sufficient that they were under his absolute control (*k*), or that he is in joint possession with the thief (*l*). Goods which are in the hands of an innocent agent or bailee of the accused are in the constructive possession of the latter (*m*).

A person who is guilty of stealing goods as a principal in either the first or the second degree cannot be convicted of receiving them (*n*).

(*e*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 93.

(*f*) *Ibid.*, s. 94. This section was applied where there was no evidence of any joint receipt but each of the prisoners separately received the whole of the stolen property (*R.* v. *Reardon* (1866), L. R. 1 C. C. R. 31).

(*g*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 96. If upon an indictment against two persons for larceny and receiving the venue is laid in county A., and the count against the receiver alleges the receiving to have been in county B., but does not state that the goods had been received from the thief, the count for receiving is bad as showing no jurisdiction to try in county A. (*R.* v. *Martin* (1849), 1 Den. 398); compare *R.* v. *Hinley* (1843), 2 Mood. & R. 524.

(*h*) Bare knowledge of the whereabouts of stolen goods does not amount to constructive possession, where there is no evidence that the person to whose possession the goods have been traced either saw them or interfered with them (*R.* v. *Orris* (1908), 73 J. P. 15, C. C. A.). A master cannot be convicted on mere receipt by his servant; there must be evidence that the servant received with the authority or knowledge of the master (*R.* v. *Pearson* (1908), 72 J. P. 451, C. C. A.).

(*i*) *R.* v. *Wiley* (1850), 2 Den. 37, 48, 50.

(*j*) *R.* v. *Hill* (1849), 1 Den. 453.

(*k*) *R.* v. *Smith* (1855), Dears. C. C. 494; *R.* v. *Hobson* (1854), Dears. C. C. 400; *R.* v. *Miller* (1853), 6 Cox, C. C. 353, C. C. R. (Ir.).

(*l*) *R.* v. *Smith*, *supra*.

(*m*) *R.* v. *Cryer* (1857), Dears. & B. 324; *R.* v. *Rogers* (1868), L. R. 1 C. C. R. 136.

(*n*) *R.* v. *Owen* (1825), 1 Mood. C. C. 96; *R.* v. *Perkins* (1852), 2 Den. 459; *R.* v. *Coggins* (1873), 12 Cox, C. C. 517, C. C. R. In these cases the principal in the first degree delivered the goods to the principal in the second degree, and it was held that the latter could not be convicted of receiving; see also *R.* v. *Kelly* (1847), 2 Car. & Kir. 379; *R.* v. *Dyer* (1801), 2 East, P. C. 767; *R.* v. *Atwell* (1801), 2 East, P. C. 768; *R.* v. *Hilton* (1858), Bell, C. C. 20, 26; *R.* v. *Gruncell* (1839), 9 C. & P. 365; *R.* v. *Densley* (1834), 6 C. & P. 399. As to goods stolen abroad and brought by the thief into this country, see p. 680, *post*.

1360. A husband may be convicted of knowingly receiving property stolen by his wife (*o*), but a wife cannot be convicted of knowingly receiving property stolen by her husband (*p*).

Husband and wife.

If a wife receives stolen property directly from her husband, she ought not to be convicted of receiving, as it is to be assumed that she acted under marital coercion (*q*).

Where a husband and wife are jointly indicted for receiving, the wife may be convicted if there is evidence of a receiving by her separate and apart from the husband (*r*).

If stolen goods are received by a wife without her husband's knowledge, and he, upon becoming aware of it, passively assents to what she has done but takes no active part in the matter, he is not guilty of receiving (*s*), but it is otherwise if, although he may not touch the stolen property, he ratifies what she has done (*t*).

What is receiving.

1361. It is immaterial whether the accused received the goods for profit, or merely to assist the thief, or for the mere purpose of concealment (*u*).

A receiver from another guilty receiver may be convicted of this offence (*x*).

If the accused has stolen the goods from the thief, or taken them from him without his concurrence, he cannot, it seems, be convicted of receiving them (*y*); he commits a new larceny of the goods.

At the time of the receiving the goods must still be stolen property; if, after the stealing but before the receiving, they have come back into the possession of the owner or his agent the accused cannot be convicted of receiving (*z*).

If, after the larceny and before the receiving, there has been a change of form in the chattel stolen but the identity remains, the receiver may be convicted of this offence (*a*). But if the indictment charges a stealing and receiving of goods and the evidence shows that it was only the proceeds of the stolen goods which were received by the person accused as receiver, the latter cannot be convicted on that indictment (*b*).

(*o*) *R.* v. *M'Athey* (1862), Le. & Ca. 250.

(*p*) *R.* v. *Brooks* (1853), Dears. C. C. 184.

(*q*) *R.* v. *Archer* (1826), 1 Mood. C. C. 143; *R.* v. *Brooks* (1853), Dears. C. C. 184; *R.* v. *Wardroper* (1860), 8 Cox, C. C. 284, C. C. R.

(*r*) *R.* v. *Baines* (1900), 69 L. J. (Q. B.) 681, C. C. R.

(*s*) *R.* v. *Dring* (1857), Dears. & B. 329.

(*t*) As by bargaining with the thief as to the price (*R.* v. *Woodward* (1862), Le. & Ca. 122).

(*u*) *R.* v. *Davis* (1833), 6 C. & P. 177; *R.* v. *Richardson* (1834), 6 C. & P. 335, 336.

(*x*) *R.* v. *Reardon* (1866), L. R. 1 C. C. R. 31.

(*y*) *R.* v. *Brett* (1845), 1 Cox, C. C. 261; *R.* v. *Wade* (1844), 1 Car. & Kir. 739.

(*z*) *R.* v. *Dolan* (1855), 6 Cox, C. C. 449, C. C. R.; *R.* v. *Schmidt* (1866), L. R. 1 C. C. R. 15; *R.* v. *Hancock* (1878), 14 Cox, C. C. 119; *R.* v. *Villensky*, [1892] 2 Q. B. 597, C. C. R. In these cases the property had been stolen, but was recovered by the prosecutors or their representatives, who then, with the view of entrapping the receiver, caused it to be delivered to him.

(*a*) As where a sheep was stolen and converted into mutton (*R.* v. *Cowell* (1796), 2 East, P. C. 617), and see p. 282, *ante*.

(*b*) *R.* v. *Walkley* (1829), 4 C. & P. 132, where six £100 notes were stolen by the thief, who changed them into notes of smaller denomination which he

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1362. To establish the statutory offence of receiving, the goods received must be proved to have been stolen, taken, or obtained under such circumstances as to constitute a crime either against the common law or against the Larceny Act, 1861 (*c*), or some Act to be read with it (*d*). A person cannot, therefore, be convicted upon an indictment charging him with feloniously receiving goods stolen by one member of a partnership or one joint owner from another (*e*), or by a wife from her husband (*f*); but in the latter instance (*g*) the accused may be indicted for the common law misdemeanour of receiving stolen goods (*h*).

To prove that the goods were stolen a confession by the thief is admissible, if it was made in the prisoner's presence, but not otherwise; if the thief has been convicted on his own confession or otherwise, proof of his conviction is not evidence, on the trial of the receiver, that the goods were stolen. In other respects evidence of the larceny which would be admissible against the thief is admissible as *primâ facie* evidence on the trial of the receiver (*i*).

The thief is an admissible witness, but the alleged receiver should not be convicted on his evidence alone without corroboration (*k*).

Receiving property stolen abroad.

1363. Any person who, without lawful excuse, receives or has in his possession in the United Kingdom (*l*) any property stolen outside the United Kingdom, knowing it to have been stolen, may be by statute indicted for such offence in any county or place in which he has or has had the property (*m*).

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delivered to the other prisoner who was charged with receiving the £100 notes. Whether such a receiver can be convicted upon a separate indictment which charges him with receiving the proceeds of the stolen property is doubtful; see *R.* v. *Chapple* (1840), 9 C. & P. 355; *R.* v. *Robinson* (1864), 4 F. & F. 43; *R.* v. *Elliott* (1908), 1 Cr. App. Rep. 15; 2 Russell on Crimes, 436, n.

(*c*) 24 & 25 Vict. c. 96.

(*d*) See Larceny Act, 1896 (59 & 60 Vict. c. 52), s. 1 (4); and Larceny Act, 1901 (1 Edw. 7, c. 10), s. 2 (2). As to the indictment, see *R.* v. *Stride*, [1908] 1 K. B. 617.

(*e*) This being an offence created by the Larceny Act, 1868 (31 & 32 Vict. c. 116), s. 1, see p. 635, *ante*; *R.* v. *Smith* (1870), L. R. 1 C. C. R. 266.

(*f*) An offence against the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 12, 16, see p. 634, *ante*; *R.* v. *Streeter*, [1900] 2 Q. B. 601, C. C. R. The rule was the same before that Act (*R.* v. *Kenny* (1877), 2 Q. B. D. 307, C. C. R., distinguishing *R.* v. *Deer* (1862) 32 L. J. (M. C.) 33, C. C. R., where the wife had been assisted by another person in stealing the goods).

(*g*) And also, it is submitted, in the former.

(*h*) *R.* v. *Payne*, [1906] 1 K. B. 97, C. C. R. In such a case it is not necessary that it should appear on the face of the indictment that the goods were stolen under such circumstances that there was no offence at common law or under the Larceny Act, 1861 (24 & 25 Vict. c. 96).

(*i*) *R.* v. *Turner* (1832), 1 Mood. C. C. 347, C. C. R.; *R.* v. *Cox* (1858), 1 F. & F. 90; *R.* v. *Kelly* (1900), 64 J. P. 84, BRUCE, J. It appears impossible to reconcile these cases with the ruling of BOSANQUET, J., in *R.* v. *Blick* (1830), 4 C. & P. 377.

(*k*) *R.* v. *Haslam* (1786), 1 Leach, 418; *R.* v. *Robinson* (1864), 4 F. & F. 43. The mere fact that the goods were found at the alleged receiver's house has been held not to be a sufficient corroboration, as the thief himself might have put them there (*R.* v. *Pratt* (1865), 4 F. & F. 315).

(*l*) See *R.* v. *Graham* (1901), 65 J. P. 248. In that case the prisoners, who had themselves stolen goods in Paris, were convicted at the North London Sessions of having such goods in their possession in the United Kingdom.

(*m*) Larceny Act, 1896 (59 & 60 Vict. c. 52), s. 1 (1); *R.* v. *Pansée* (1897), 61 J. P. 536. The Act is to be construed and have effect as part of the Larceny Act,

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For this purpose property is deemed to have been stolen where it has been taken, extorted, obtained, embezzled, converted, or disposed of under such circumstances that if the act had been committed in the United Kingdom the person committing it would have been guilty of an indictable offence according to the law for the time being of the United Kingdom (*n*).

Such offence of receiving is a felony or misdemeanour according as the act committed outside the United Kingdom would have been a felony or misdemeanour if committed in England or Ireland (*o*).

The punishment for such offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*p*).

Venue.

1364. If any person in any one part of the United Kingdom receives or has in his possession any money or other property which has been stolen or otherwise feloniously taken in any other part of the United Kingdom, such person knowing such property to have been stolen or otherwise feloniously taken, he may be indicted, tried and punished in that part of the United Kingdom where he so receives or has such property as if it had been originally stolen or taken in that part (*q*).

Indictment.

1365. In an indictment for receiving stolen goods it must be alleged, and it must also be proved, that the accused at the time when he received the goods knew that they were stolen or dishonestly obtained (*a*).

Evidence.

It is not necessary to show that he knew the exact nature of the principal offence, nor that his knowledge should have amounted to certainty. It is sufficient if the jury is satisfied that he believed that the property had been stolen or dishonestly obtained (*b*).

Possession of property recently stolen.

The possession by a person of property which has been recently stolen is some evidence, in the absence of a reasonable explanation by him as to how it came into his possession, that he either stole it or received it knowing it to be stolen. Whether it is evidence of larceny or of receiving depends upon the circumstances of the case (*c*). The weight of such evidence depends upon the nature of

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1861 (24 & 25 Vict. c. 96) (*ibid.*, s. 1 (4)). The Channel Islands are not part of the United Kingdom, and if goods are stolen there and received in England the indictment must be under this Act (see *R.* v. *Debruiel* (1861), 11 Cox, C. C. 207).

(*n*) Larceny Act, 1896 (59 & 60 Vict. c. 52), s. 1 (2).

(*o*) *Ibid.*, s. 1 (3).

(*p*) *Ibid.*, s. 1 (1). ; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*q*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 114.

(*a*) *R.* v. *Wilson* (1838), 2 Mood. C. C. 52. It is sufficient to allege knowledge that the goods were "feloniously stolen," without stating whether the theft was felony at common law or by statute (*R.* v. *Stride*, [1908] 1 K. B. 617, C. C. R.).

(*b*) *R.* v. *White* (1859), 1 F. & F. 665 ; see *R.* v. *Adams* (1858), 1 F. & F. 86.

(*c*) *R.* v. *Langmead* (1864), Le. & Ca. 427. "If no other person is involved in the transaction forming the subject of the inquiry, and the whole of the case against the prisoner is that he was found in the possession of the stolen property, the evidence would, no doubt, point to a case of stealing rather than a case of receiving; but in every case, except indeed where the possession is so recent that it is impossible for anyone else to have committed the theft, it becomes a mere question for the jury whether the person found in possession of the stolen property stole it himself or received it from someone else (*ibid.*, *per* POLLOCK, C. B., at p. 439).

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the goods and the length of time which has elapsed from the time when they were stolen to the date when they are proved to have been in the possession of the accused (*d*).

If a person is accused of receiving stolen property, and the stolen property is found in his possession under circumstances requiring him to give a reasonable account of how he became possessed of it, and he gives such a reasonable account by stating the name of the person from whom he received it, who is shown to be a real person, it is incumbent upon the prosecution, unless there is other substantial evidence against the prisoner negativing the truth of his account, to show that that account is false by calling as a witness the person named by the prisoner. If the prisoner's account is unreasonable or improbable on the face of it, or if there is other evidence against him, the onus of proving the truth of his account lies on him (*e*).

(*d*) 2 East, P. C. 665; *R.* v. *Cockin* (1836), 2 Lew. C. C. 235; *R.* v. *Adams* (1829), 3 C. & P. 600, where PARKE, J., directed an acquittal upon the ground that possession of the stolen property (an axe, a saw, and a mattock) three months after it was lost was not such a recent possession as to require the prisoner to show how he came by it. In *Anon.* (1826), 2 C. & P. 459, the goods had been lost for sixteen months, and the prisoner was not required to account for having them in his possession. In *R.* v. *Partridge* (1836), 7 C. & P. 551, upon an indictment for stealing forty yards of cloth of which the prisoner was found in possession two months after it was missed, PATTESON, J., allowed the case to go to the jury, observing that if the goods were such as to pass from hand to hand readily two months would be a long time, but that there it was not so. In *R.* v. *Cooper* (1852), 3 Car. & Kir. 318, the only evidence against the prisoner was that he was found in possession of a horse which had been lost six months previously; MAULE, J., said that he ought not to be called upon to account for it, and directed an acquittal. A similar course was taken by CHANNELL, B., in *R.* v. *Harris* (1860), 8 Cox, C. C. 333, where a sheep found in the prisoner's possession had been lost six months previously.

The goods must be proved to have been in the possession of the prisoner or under his control; that they were in a place to which he and others had access is insufficient in the absence of other evidence against him (*R.* v. *Hughes* (1878), 14 Cox, C. C. 223, C. C. R.). The mere fact that the goods were found on the prisoner's premises is not of itself sufficient evidence that he received them or that they were in his possession, as they might have been placed there by the thief or some other person without his knowledge or assent (*R.* v. *Pratt* (1865), 4 F. & F. 315); see also *Ex parte Ransley* (1823), 2 Dow. & Ry. (M. C.) 572, where the court quashed a conviction under stat. 11 Geo. 1, c. 30, s. 16, for knowingly harbouring and concealing three gallons of smuggled spirits, upon the ground that the mere fact of the spirits being found in the defendant's house during his absence could not be considered conclusive evidence of knowingly harbouring them there. In *R.* v. *Matthews* (1850), 1 Den. 596, 601, COLERIDGE, J., said that *primâ facie* if stolen goods are found in a man's house he, not being the thief, is a receiver; but in that case there was evidence that the prisoner had bought the stolen fowls from the thief. In *R.* v. *Orris* (1908), 73 J. P. 15, C. C. A., it was held that bare knowledge of the whereabouts of stolen goods does not amount to constructive possession.

(*e*) *R.* v. *Crowhurst* (1844), 1 Car. & Kir. 370; *R.* v. *Smith* (1845), 2 Car. & Kir. 207; *R.* v. *Harmer* (1848), 2 Cox, C. C. 487; compare *R.* v. *Wilson* (1857), Dears. & B. 157, C. C. R., where the court, although evidently disapproving the conviction, declined to quash it on the ground that there was some evidence against the prisoner; see also *R.* v. *Ritson* (1884), 15 Cox, C. C. 478, C. C. R., where, the thief having given evidence proving the untruth of the prisoner's account, the prosecution did not call the person from whom the prisoner said he bought the goods, and the court upheld the conviction. As to the effect of a presumption of guilt on the defence, see *R.* v. *Stoddart* (1909), 25 T. L. R. 612, C. C. A.

1366. To prove the guilty knowledge evidence may be given of the prisoner having received from the thief other property stolen by him from the prosecutor (*f*).

Evidence of possession of other stolen property.

Where proceedings are taken against any person for having received property knowing it to be stolen, or for having in possession stolen property, evidence may be given at any stage of the proceedings that there was found in his possession (*g*) other property (*h*) stolen within the preceding twelve months, and such evidence may be taken into consideration for the purpose of proving that he knew the property which forms the subject of the proceedings against him to be stolen (*i*).

Evidence of previous convictions.

Where evidence has been given that the property alleged in the indictment to have been stolen was found in the possession of the person charged as receiver, then if such person has within five years immediately preceding been convicted of any offence involving fraud or dishonesty evidence of such previous conviction may be given at any stage of the proceedings, and may be taken into consideration for the purpose of proving that the person accused knew the property which was proved to be in his possession to have been stolen. Not less than seven days' notice in writing (*j*) must, however, be given to the accused that evidence is intended to be given of such previous conviction. It is not necessary, for the purpose of giving such evidence, to charge the previous conviction in the indictment (*k*).

(*f*) *R.* v. *Dunn* (1826), 1 Mood. C. C. 146; *R.* v. *Davis* (1833), 6 C. & P. 177. In *R.* v. *Nicholls* (1858), 1 F. & F. 51, upon an indictment against two men for stealing and receiving lead, COCKBURN, C.J., allowed evidence to be given of several sales of similar lead during the month previous to the alleged stealing, the lead sold on the last occasion being identified as the prosecutor's property, but he confined the evidence to sales made by the prisoners when in company together. See as to evidence of this class, p. 380, *ante*.

(*g*) The property must have been found in his possession at the same time when the property which is the subject of the indictment was found in his possession. The fact that the prisoner had been in possession and had disposed of other stolen property before the goods which are the subject of the indictment were found in his possession is not admissible in evidence, unless the case falls within the principle of *R.* v. *Dunn* (1826), 1 Mood. C. C. 146, and *R.* v. *Nicholls* (1858), 1 F. & F. 51 (*R.* v. *Drage* (1878), 14 Cox, C. C. 85; *R.* v. *Carter* (1884), 12 Q. B. D. 522, C. C. R.). But the two findings need not be absolutely simultaneous, and it is sufficient that the goods previously stolen are found on a second search of the prisoner's premises made shortly after the search when the goods which are the subject of the indictment were found (*ibid.*, *per* HAWKINS, J.).

(*h*) The fact that this property is the subject of another indictment against the prisoner does not render this evidence inadmissible (*R.* v. *Jones* (1877), 14 Cox, C. C. 3).

(*i*) Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 19. Evidence of this kind is not admissible where the real charge against the prisoner is larceny, although the indictment contains a count for receiving (*R.* v. *Girod* (1906), 70 J. P. 514, C. C. R.).

(*j*) See as to this *R.* v. *Whitley* (1908), 72 J. P. 272.

(*k*) Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 19. The evidence is admissible although the charge of receiving does not stand alone but is coupled with a count for stealing (*R.* v. *Bromhead* (1906), 71 J. P. 103, C. C. R.). Where the case is substantially one of stealing the mere fact of adding a count for receiving will not make such evidence admissible (*ibid.*; and see *R.* v. *Girod*, *supra*).

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Receiving goods stolen from the Post Office.

1367. It is a felony (*l*) to receive any mailbag or any postal packet (*m*), or any chattel, or money, or valuable security (*n*), the stealing, or taking, or embezzling, or secreting whereof amounts to a felony under the Post Office Act, 1908 (*o*), if the receiver knows that the same has been so feloniously taken, embezzled, or secreted, and has been sent or intended to be sent by post.

This offence is punishable in the same way as the stealing, taking, embezzling, or secreting the same; and the offender may be indicted and convicted, whether the principal offender has or has not been previously convicted, or is or is not amenable to justice (*p*).

Pawnbroker.

1368. If a pawnbroker is convicted on indictment of any fraud in his business, or of receiving stolen goods knowing them to be stolen, the court before which he is convicted may, if it thinks fit, direct that his licence shall cease to have effect, and it shall so cease accordingly (*q*).

SUB-SECT. 10.—*Orders for Restitution of Property.*

Restitution of stolen property.

1369. If any person guilty of any felony or misdemeanour mentioned in the Larceny Act, 1861 (*r*), or the Larceny Act, 1896 (*s*), in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving any chattel, money, valuable security (*t*), or other property (*a*) whatsoever is indicted for such

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(*l*) Post Office Act, 1908 (8 Edw. 7, c. 48), s. 52.

(*m*) Evidence that any article is in the course of transmission by post, or has been accepted on behalf of the Postmaster-General for transmission by post, is sufficient evidence that the article is a postal packet (Post Office Act, 1908 (8 Edw. 7, c. 48), s. 74).

(*n*) "Valuable security" has the same meaning in the Post Office Act, 1908 (8 Edw. 7, c. 48), as in the Larceny Act, 1861 (24 & 25 Vict. c. 96) (as to which see p. 642, *ante*), and includes anything which is a valuable security within the meaning of that Act and any part of such thing (Post Office Act, 1908 (8 Edw. 7, c. 48), s. 89).

(*o*) 8 Edw. 7, c. 48; as to the offences which amount to felonies under this Act, see p. 644, *ante*.

(*p*) Post Office Act, 1908 (8 Edw. 7, c. 48), s. 52. As to venue, see s. 72. The property may be alleged to belong to His Majesty's Postmaster-General (s. 73).

(*q*) Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 38.

(*r*) 24 & 25 Vict. c. 96.

(*s*) 59 & 60 Vict. c. 52, which relates to property stolen abroad and received in the United Kingdom; see p. 680, *ante*. This Act is to be construed and have effect as part of the Larceny Act, 1861 (24 & 25 Vict. c. 96) (*ibid.*, s. 1 (4)). An order of restitution cannot be made where the conviction is under the Post Office Act, 1908 (8 Edw. 7, c. 48) (*R.* v. *Jones* (1880), 14 Cox, C. C. 528), or for forgery (*R.* v. *Rolfe* (1889), 53 J. P. 823), nor, it is submitted, upon a conviction of a husband or wife under the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75); see *R.* v. *Payne*, [1906] 1 K. B. 97, C. C. R.

(*t*) For the definition of "valuable security" see p. 642, *ante*.

(*a*) The term "property" in the Larceny Act, 1861 (24 & 25 Vict. c. 96), includes every description of real and personal property, money, debts and legacies, and all deeds and instruments relating to, or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and also includes not only such property as shall have been originally in the possession or under the control of any party, but also any property into

offence by or on behalf of the owner of the property (*b*), or his executor or administrator (*c*), and convicted thereof, the property is to be restored (*d*) to the owner or his representative; and the court before whom any person is tried for any such felony or misdemeanour (*e*) has power to award from time to time writs of restitution for the property or to order the restitution thereof in a summary manner (*f*).

If, however, it appears that any valuable security has been *bonâ fide* paid or discharged by some person liable to the payment thereof, or, being a negotiable security, has been *bonâ fide* taken or received by transfer or delivery by some person for a just and valuable consideration without any notice that it had by any felony or misdemeanour been stolen, obtained, converted, or disposed of, the court cannot order the restitution of such security (*g*).

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or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 1).

(*b*) The prosecution of an offender by the Director of Public Prosecutions has, for the purpose of enabling a person to obtain a restitution of property, or obtaining, exercising or enforcing any right, claim or advantage whatsoever, the same effect as if such person had been bound over to prosecute, and had prosecuted the offender, provided that such person gives all reasonable information and assistance to the director in relation to the prosecution (Prosecution of Offences Act, 1879 (42 & 43 Vict. c. 22), s. 7).

(*c*) See also 1 Hale, P. C. 542.

(*d*) The words in the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 100, are "the property shall be restored." Although, notwithstanding these words, the court has a discretion as to whether or not an order of restitution shall be made (see p. 687, *post*), yet even before the passing of the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 24 (1) (as to which, see p. 686, *post*), their effect was that immediately upon the conviction the legal right to the goods revested in the prosecutor if he had lost it by a sale in market overt or otherwise (*Horwood* v. *Smith* (1788), 2 Term Rep. 750; *Vilmont* v. *Bentley* (1886), 18 Q. B. D. 322, C. A.; affirmed (1887), 12 App. Cas. 471, but as to the last-mentioned case, see p. 686, *post*).

(*e*) Formerly the court of King's Bench, as part of its judgment upon an appeal of larceny, could award a writ of restitution. The King's Bench Division has now no such power except upon a conviction in that court (*R.* v. *London Corporation* (1869), L. R. 4 Q. B. 371).

(*f*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 100. The procedure is now always by a summary order. The last reported writ of restitution appears to have been in *Burges* v. *Coney* (1697), Tremaine's Pleas of the Crown, p. 315. A form of the writ is given in 4 Chitty, Criminal Law, 491. See also *Golightly* v. *Reynolds* (1771), Lofft, 88, 90, 91.

At common law an order of restitution could only be made upon a conviction on appeal, and not upon a conviction on indictment, the goods in the latter case, if in the convict's possession, or waived (*i.e.*, thrown away in flight) by him, being forfeited to the Crown or the lord of the franchise. By stat. (1529) 21 Hen. 8, c. 11, the power to order restitution to the owner was given to the court before whom a person was convicted upon a prosecution by the owner by indictment for robbery or larceny, and the title of the Crown and of a purchaser in market overt was in such a case defeated.

(*g*) S. 100 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), adds the words "or any reasonable cause to suspect." It is submitted that these words, which were taken from stat. 7 & 8 Geo. 4, c. 29, s. 57, and were in conformity with the law as declared in *Gill* v. *Cubitt* (1824), 5 Dow. & Ry. (K. B.) 324, are now

SECT. 1. Taking Property.

The provision for restitution does not apply in the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker, or other agent intrusted with the possession of goods or documents of title to goods (*h*) for any misdemeanour (*i*) against the Larceny Act, 1861 (*k*), or the Larceny Act, 1901 (*l*).

Revesting property.

1370. Where goods have been stolen and the offender is prosecuted to conviction the property in the goods revests in the person who was the owner or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise (*m*), and an order of restitution can in such a case be made in his favour.

Where goods have been obtained by fraud or other wrongful means not amounting to larceny the property in such goods does not revest in the person who was the owner of the goods by reason only of the conviction of the offender (*n*). But if the goods are in the possession of the defendant, the owner by disaffirming the fraudulent transaction regains a right to the property, and in such a case an order for restitution should be made.

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impliedly repealed, at any rate so far as bills of exchange, promissory notes, and cheques are concerned, by the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 29, 38, 90, and that if the holder of such a document, without notice of any defect of title, has given value for it, an order of restitution cannot be made against him, notwithstanding negligence on his part. The words referred to are therefore omitted in the text.

(*h*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 100. For definition of "documents of title to goods" see Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 1, p. 642, *ante*.

(*i*) As to these misdemeanours, see pp. 657 *et seq.*, *ante*. The provisions of the Larceny Act, 1901 (1 Edw. 7, c. 10), s. 1, are substituted for ss. 75 and 76 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), and an order of restitution cannot therefore be made upon a conviction for fraudulent misappropriation under the Larceny Act, 1901 (1 Edw. 7, c. 10) (*R.* v. *Brockwell* (1905), 69 J. P. 376), Sir F. FULTON, K.C., Recorder of London).

(*k*) 24 & 25 Vict. c. 96, s. 100.

(*l*) 1 Edw. 7, c. 10.

(*m*) Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 24 (1); *Horwood* v. *Smith* (1788), 2 Term Rep. 750; *Scattergood* v. *Sylvester* (1850), 15 Q. B. 506. It is enacted by the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 21 (2), that nothing in the Act shall affect the provisions of the Factors Act, 1889 (52 & 53 Vict. c. 45), or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof, and it was held in *Payne* v. *Wilson*, [1895] 1 Q. B. 653, by the King's Bench Division, that when a title has been acquired under the Factors Act, 1889 (52 & 53 Vict. c. 45), s. 9, by a person who has obtained possession of goods for value from one who has bought or agreed to buy the goods, his title is not divested by a conviction of the latter for larceny as a bailee of the goods. The judgment in this case was reversed on appeal ([1895] 2 Q. B. 537, C. A.), but only on the ground that there was in that case no agreement to buy.

(*n*) Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 24 (2). Before this Act it had been held by the House of Lords in *Bentley* v. *Vilmont* (1887), 12 App. Cas. 471, overruling *Moyce* v. *Newington* (1878), 4 Q. B. D. 32, that the effect of the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 100, was that upon a conviction for obtaining goods by false pretences, the property in the goods was revested in the prosecutor as against an innocent purchaser from the fraudulent person, although the prosecutor, induced by the fraud, had sold the goods to the fraudulent person, and so passed the property to him. The Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 24 (2), overrides *Bentley* v. *Vilmont*, and an order of restitution cannot therefore be made in such a case (*R.* v. *Walker* (1901), 65 J. P. 729; *R.* v. *George* (1901), 65 J. P. 729). If the conviction is for obtaining

If such owner parted with his property in the goods when they were obtained from him by fraud an order of restitution may be made in his favour as against the person convicted of the fraud, or his agent (*o*), or a donee from him, or an assignee with notice of the fraud, or an innocent holder for value whose title accrued after the contract induced by fraud had been revoked, but not as against an innocent holder for value whose title accrued before such revocation (*p*).

Order for restitution.

1371. An order of restitution can only be made against a person who is in possession of the goods at the time of the conviction (*q*). It can only be made in respect of the goods specified in an indictment upon which an offender has been convicted or their proceeds (*r*). A person against whom an application for an order of restitution is made is entitled to be heard in opposition (*s*).

The court has a discretion as to whether or not it will make the order (*t*), and if it refuses to make it the title (if any) of the prosecutor to the goods is not affected by such refusal (*a*).

An order may be made for the restitution of the proceeds of the stolen goods to the prosecutor, if such proceeds are in the hands of the convict or of an agent for him (*b*).

If a person is indicted for larceny and outlawed an order of restitution may be made (*c*).

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by false pretences, but the evidence shows that the offence really amounted to larceny, an order of restitution can be made against an innocent holder for value; see *R.* v. *Walker* (1901), 65 J. P. 729, and p. 702, *post*.

(*o*) *R.* v. *George* (1901), 65 J. P. 729; and see *Re Vautin, Ex parte Saffery*, [1899] 2 Q. B. 549.

(*p*) See Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 23, and title SALE OF GOODS.

(*q*) It cannot be made against a person who has parted with the goods, even with notice of the larceny (*Horwood* v. *Smith* (1788), 2 Term Rep. 750; *Vilmont* v. *Bentley* (1886), 18 Q. B. D. 322, 331, C. A.).

(*r*) *R.* v. *London Corporation* (1858), E. B. & E. 509; S. C., *R.* v. *Pierce*, 8 Cox, C. C. 344. If in the possession of a third person the goods ought to be produced and identified before an order is made (*R.* v. *Macklin* (1850), 5 Cox, C. C. 216; *R.* v. *Goldsmith* (1873), 12 Cox, C. C. 594; *R.* v. *Smith* (1873), 12 Cox, C. C. 597; *R.* v. *Ford* (1869), 11 Cox, C. C. 320).

(*s*) *R.* v. *Macklin, supra*.

(*t*) *Vilmont* v. *Bentley, supra*, at p. 327.

(*a*) *Scattergood* v. *Sylvester* (1850), 15 Q. B. 506; *Vilmont* v. *Bentley, supra*. In this case the court which tried the prisoner had refused to make an order of restitution.

(*b*) See the definition of "property" in the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 1 (p. 684, *ante*); *R.* v. *Powell* (1836), 7 C. & P. 640. If the proceeds are in the hands of an innocent third party who holds them for value an order of restitution ought not to be made as regards such proceeds (*Lindsay* v. *Cundy* (1876), 1 Q. B. D. 348. The judgment in this case was reversed on appeal ((1878) 3 App. Cas. 459), but not on this point); see also *R.* v. *Justices of Central Criminal Court* (1886), 17 Q. B. D. 598; 18 Q. B. D. 314, C. A.; and *R.* v. *Elliott* (1908), 1 Cr. App. Rep. 15.

(*c*) The outlawry for felony being equivalent to a conviction (1 Hale, P. C. 545; 2 Hawk. P. C., c. 48, s. 22). This is not so if the outlawry is for misdemeanour (*R.* v. *Tippin* (1689), 2 Salk. 494). But outlawry is practically obsolete; see p. 431, *ante*. It appears that an order of restitution cannot be made in favour of an alien enemy (Bro. Abr. tit. Restitution, 35).

SECT. 1. Taking Property.

A person against whom an order of restitution is made has no right of appeal against it to the Court of Criminal Appeal (*d*).

Restitution of stolen goods pawned.

1372. If any person is convicted in any court of feloniously taking or fraudulently obtaining any goods and chattels, and it appears to the court that the same have been pawned with a pawnbroker, the court on proof of the ownership of the goods may, if it thinks fit, order the delivery thereof to the owner, either on payment to the pawnbroker of the amount of the loan, or of any part thereof, or without such payment, as to the court, according to the conduct of the owner and the other circumstances of the case, seems just and fitting (*e*).

Compensation to innocent purchaser of stolen property.

1373. Where a prisoner is convicted of larceny or any other offence which includes the stealing of any property, and it appears by the evidence that the prisoner has sold the stolen property to a person who has had no knowledge that the same was stolen, and that any moneys have been taken from the prisoner on his apprehension, the court may, on the application of such purchaser and on the restitution of the stolen property to the prosecutor, order that out of such moneys a sum not exceeding the amount of the proceeds of the sale be delivered to the purchaser (*f*).

The court of trial may, upon the application of any person aggrieved, and immediately after the conviction of any person for felony, award any sum of money, not exceeding £100, by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the felony. The amount so awarded is to be deemed a judgment debt due to the person entitled to receive it from the convict, and may be ordered to be paid out of any moneys taken from the convict on his apprehension, or may be enforced in the same way as a judgment or order of any court for the payment of any costs in any civil action or proceeding may for the time being be enforced (*g*).

SECT. 2.—*Obtaining Property by Fraud.*

Obtaining property by fraud.

1374. If a person obtains the property of another by fraud in such circumstances that the ownership of the property passes to

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(*d*) *R.* v. *Elliott*, [1908] 2 K. B. 452, C. C. A. Nor is there an appeal to any other court, although if the order has been made at quarter sessions it can, if wrongly made, be quashed by *certiorari*. As to the suspension of the operation of an order of restitution pending an appeal by the convict and the power of the Court of Criminal Appeal to rescind or vary such order if the appeal is allowed, see p. 437, *ante*.

(*e*) Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 30,(2). As regard goods obtained by fraud this provision must be read subject to the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 24 (2); p. 686, *ante*. The discretionary power given by the Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 30, to make a restitution order conditional upon the whole or part of a pawnbroker's advance being repaid to him only applies where the pledge is for a sum not exceeding £10 ; see s. 10 of that Act. And see title PAWNBROKERS AND PLEDGES.

(*f*) Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 9.

(*g*) Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 4; see *R.* v. *Lovett* (1870), 11 Cox, C. C. 602.

such person with the consent of the owner, this does not constitute larceny (*h*), nor at common law does it constitute a criminal offence at all, unless it amounts to a cheat or a forgery (*i*).

SUB-SECT. 1.—*Common Law Cheat.*

Cheating.

1375. Obtaining the property of another by fraud does not amount to a cheat at common law unless it is effected by a deceitful and illegal practice, not amounting to felony, which directly affects or may affect the public (*k*); and the contrivance used must be of

(*h*) See 2 East, P. C. 816; *R.* v. *Prince* (1868), L. R. 1 C. C. R. 150; and p. 638, *ante*. If the owner is tricked by a person into parting with the possession or temporary use of property, and the person appropriates the property to his own use with a dishonest mind, such person is guilty of larceny (*R.* v. *Russett*, [1892] 2 Q. B. 312, C. C. R.; *R.* v. *Buckmaster* (1887), 20 Q. B. D. 182, C. C. R.). B. by a mistake, induced in consequence of the fraud of A., believes that A. is C., and B., acting under this belief, enters into a contract with A. and delivers goods to him in the belief that he is C. As B. never intended to contract with A., the property does not pass to A., and if A. appropriates the goods, he is guilty of larceny (*Cundy* v. *Lindsay* (1878), 3 App. Cas. 459). If a servant or agent with only a limited authority to dispose of property is induced by fraud to part with the property in a case to which his authority does not extend, the property does not pass and the person who so obtains it is guilty of larceny (*R.* v. *Longstreeth* (1826), 1 Mood. C. C. 137); see *Oppenheimer* v. *Frazer*, [1907] 2 K. B. 50, C. A.

(*i*) As to the distinction between a cheat and a forgery at common law, see *R.* v. *Ward* (1727), 2 Stra. 747.

(*k*) 2 East, P. C. 818; *R.* v. *Brailsford*, [1905] 2 K. B. 730, at p. 745. At common law fraud, "to be indictable, must be such a one as affects the public; as if a man uses false weights and measures, and sells by them to all or many of his customers, or uses them in the general course of dealing; so if a man defrauds another under false tokens; so if there be a conspiracy to cheat" (*R.* v. *Wheatly* (1761), 2 Burr. 1125, *per* Lord MANSFIELD, C.J., at p. 1127; and see *R.* v. *Young* (1789), 3 Term Rep. 98, *per* BULLER, J., at p. 104; *R.* v. *Lara* (1796), 6 Term Rep. 565). The following are instances of cheats indictable at common law:—Preparing false evidence (*R.* v. *Vreones*, [1891] 1 Q. B. 360, C. C. R.); making other deceitful contrivances to interfere with the administration of justice (2 East, P. C. 821; *Omealy* v. *Newell* (1807), 8 East, 364); selling unwholesome provisions (*R.* v. *Treeves* (1796), 2 East, P. C. 821; *R.* v. *Dixon* (1814), 3 M. & S. 11; *R.* v. *Mackarty* (1705), 2 Ld. Raym. 1179; 3 Ld. Raym. 325); non-accounting or false accounting by a public officer (*R.* v. *Bembridge* (1783), 22 State Tr. 1; *R.* v. *Commings* (1696), 5 Mod. Rep. 179; *R.* v. *Martin* (1809), 2 Camp. 268); fraudulent enlistment by an apprentice (*R.* v. *Jones* (1777), 1 Leach, 174); fraudulent pretending to have power to discharge a soldier and taking money to discharge him (*R.* v. *Serlested* (1627), Lat. 202); using false weights or measures or tokens, or marks of a public nature; putting a false mark or token on an article to make it appear to be genuine (*R.* v. *Closs* (1858), Dears. & B. 460); playing with false dice (*Maddock's Case* (1619), 2 Roll. Rep. 107; 2 East, P. C. 820); conspiracy to defraud (*R.* v. *Orbell* (1703), 6 Mod. Rep. 42; 2 East, P. C. 823); obtaining a passport from the Foreign Office by false representations (*R.* v. *Brailsford*, [1905] 2 K. B. 730). Some of the cheats which were indictable at common law are now made statutory offences (see Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 17; Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 7; Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24), s. 1; Admiralty Powers etc. Act, 1865 (28 & 29 Vict. c. 124), s. 6; Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 3, 4; Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), s. 25; Government Annuities Act, 1882 (45 & 46 Vict. c. 51), ss. 11, 12; Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2; Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 22 (see s. 33); Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 12; Police Act, 1890 (53 & 54 Vict. c. 45), s. 9; Markets and Fairs (Weighing of Cattle) Act, 1891 (54 & 55 Vict. c. 70), s. 3; Anchors and Chain

SECT. 2. Obtaining Property by Fraud.

such a character that common prudence and caution are not sufficient security against a person being defrauded thereby (*l*).

A mere private cheat or imposition, even if accompanied by a false affirmation, is not indictable as a cheat at common law, if no false token is used (*m*). And even the use of a false token or of a forged document does not amount to a cheat at common law, unless some property is obtained by means of such use (*n*). A common law cheat is a misdemeanour.

The punishment is imprisonment for a term not exceeding two years with or without hard labour, or a fine with or without imprisonment (*o*).

SUB-SECT. 2.—*False Pretences.*

Obtaining chattel etc. by false pretences.

1376. By statute (*p*) it is a misdemeanour for a person by any false pretence to obtain from another any chattel, money, or valuable security with intent to defraud (*q*).

Cables Act, 1899 (62 & 63 Vict. c. 23), ss. 13—16). As to fraudulent enlistment, see Army Act, 1881 (44 & 45 Vict. c. 58), ss. 96, 99). Misconduct on the part of a public officer in performing a statutory duty is not indictable when the statute imposing the duty provides other remedies (*R.* v. *Hall*, [1891] 1 Q. B. 747).

(*l*) 1 Hawk. P. C., c. 23, s. 1; and see *R.* v. *Jones* (1703), 1 Salk. 379; *R.* v. *Nehuff* (1705), 1 Salk. 151; *R.* v. *Wheatly* (1761), 2 Burr. 1125, at pp. 1127, 1129.

(*m*) *R.* v. *Pinkney* (1733), 2 East, P. C. 818; *R.* v. *Wheatly* (1761), 2 Burr. 1125.

(*n*) See *R.* v. *Hamilton*, [1901] 1 K. B. 740, C. C. R. A forgery at common law is only indictable as a cheat at common law, when some person is actually prejudiced (*R.* v. *Ward* (1727), 2 Stra. 747).

(*o*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29; see *R.* v. *Hamilton*, [1901] 1 K. B. 740, C. C. R. The offence is triable at quarter sessions.

(*p*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 88.

(*q*) The first statute against false pretences was the stat. (1541) 33 Hen. 8, c. 1, which made it an offence for any person falsely and deceitfully to obtain or get into his hands or possession any money, goods, chattels, jewels, or other things of any other person by colour and means of a false token or counterfeit letter made in any other man's name. This statute was extended by the stat. (1757) 30 Geo. 2, c. 24, s. 1, which made it an offence knowingly and designedly, by false pretences, to obtain money, goods, wares or merchandises, with intent to cheat or defraud any person of the same. The stat. (1757) 30 Geo. 2, c. 24, s. 1, was extended by the stat. (1812) 52 Geo. 3, c. 64, s. 1, so as to include the obtaining of any bond, bill of exchange, bank note, promissory note, or other security for the payment of money, or any warrant or order for the payment of money or delivery or transfer of goods or other valuable thing. These three statutes were repealed by stat. (1827) 7 & 8 Geo. 4, c. 27, and their place was taken by stat. (1827) 7 & 8 Geo. 4, c. 29, s. 53, which provided that every person who should, by any false pretences, obtain from any other person any chattel, money, or valuable security with intent to cheat or defraud any person of the same, should be guilty of a misdemeanour. Under the stat. (1827) 7 & 8 Geo. 4, c. 29, it was formerly necessary to allege in an indictment for false pretences an intent to defraud some particular person, but this was made unnecessary by the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 8, which made it sufficient to allege simply an intent to defraud. The provisions of stat. (1827) 7 & 8 Geo. 4, c. 29, s. 53, and of the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 8, were repealed by stat. (1861) 24 & 25 Vict. c. 95, and were re-enacted by the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 88, with some alterations and additions. The word "cheat" was omitted from the phrase "with intent to cheat or defraud," because it means the same as "defraud" and is therefore unnecessary (see

The punishment for the offence is penal servitude for not more than five or for not less than three years, or imprisonment with or without hard labour for not more than two years (*r*).

Winning money etc. by fraud at gaming.

1377. A person who, by any fraud or unlawful device or ill-practice (1) in playing at or with cards, dice, tables, or other game, or (2) in bearing a part in the stakes, wagers, or adventures, or (3) in betting on the sides or hands of those that play, or (4) in wagering on the event of any game, sport, pastime or other exercise, wins from any other person to himself or to any other or others any sum of money or valuable thing, is by statute to be deemed guilty of obtaining such money or valuable thing with intent to defraud such persons (*s*).

R. v. *Ingham* (1859), Bell, C. C. 181, at p. 185). A proviso was added, making it unnecessary to allege any ownership of the chattel, money, or valuable security (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 88). This renders obsolete the cases of *R.* v. *Norton* (1838), 8 C. & P. 196 ; *R.* v. *Martin* (1838), 8 Ad. & El. 481 ; *Sill* v. *R.* (1853), 1 E. & B. 553. A section (s. 89) was also added, which extends the meaning of the word "obtain"; it provides that a person who, by any false pretences, causes or procures any money to be paid, or any chattel or valuable security to be delivered to any other person for the use or benefit, or on account of the person making the false pretences, *or of any other person*, with intent to defraud, is to be deemed to have obtained such money etc. within the meaning of s. 88; s. 89 renders obsolete the cases of *R.* v. *Wavell* (1829), 1 Mood. C. C. 224 (where it was held that obtaining credit in account by a false pretence was not within the stat. (1827) 7 & 8 Geo. 4, c. 29, s. 53), *R.* v. *Garrett* (1853), Dears. C. C. 232 (where it was held that under the stat. 7 & 8 Geo. 4, c. 29, s. 53, the obtaining must be by the person who made the false pretence or his agent), *R.* v. *Martin* (1859), 1 F. & F. 501 (where, by a false pretence made to B., A. obtained the delivery to C. of certain goods which he sold to C., and for which he received payment from C., and it was held that A. could not be found guilty of an indictment under the stat. (1827) 7 & 8 Geo. 4, c. 29, of obtaining the goods from B. by false pretences (see Greaves, Criminal Law Consolidation Acts, 2nd ed., 177). Except on points to which these alterations and additions apply, the decisions on the stat. (1827) 7 & 8 Geo. 4, c. 29, s. 53, as amended by the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), ss. 8, 12, are authorities on the present law. The decisions on the statutes before stat. (1827) 7 & 8 Geo. 4, c. 29, are sometimes now quoted as authorities, but are to be used with caution owing to the difference in language between those statutes and the statutes now in force (see *R.* v. *Bowen* (1849), 13 Q. B. 790, *per* DENMAN, C.J., at p. 794, commenting on *R.* v. *Henderson* (1841), 2 Mood. C. C. 192).

(*r*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 88 ; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. Either in lieu of or in addition to the penal servitude a fine may be imposed, and the offender may be required to enter into his own recognisances and to find sureties, both or either, for keeping the peace and being of good behaviour (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 117). A previous conviction for any other crime before the commission of the offence of obtaining property by false pretences is not a matter which can be alleged in an indictment for false pretences (*R.* v. *Horn* (1883), 15 Cox, C. C. 205, C. C. R.). The offence is triable at quarter sessions.

(*s*) Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 17. "Tables," it seems, means the game of backgammon (Bailey's English Dictionary, *sub voce* "Backgammon"). It is not necessary to state in the indictment to whom the sum of money or valuable thing belongs (*R.* v. *Moss* (1856), Dears. & B. 104, *per* POLLOCK, C.B., at p. 108). An omission to state such ownership is at all events cured by verdict (*R.* v. *Moss*, *supra*, *per* ERLE, J., at p. 109). The material part of the indictment in that case was as follows: "That W. M. on the of in the year of our Lord by fraud, unlawful device and ill practice in playing at and with cards, unlawfully did win from one H. F. B. to a certain

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Pretending to exercise witchcraft.

1378. Everyone is by statute guilty of an indictable misdemeanour (*t*) who (1) pretends to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration; or (2) undertakes to tell fortunes; or (3) pretends from skill or knowledge in any occult or crafty science to discover where and in what manner any goods or chattels, supposed to have been stolen or lost, may be found.

The punishment for this offence is imprisonment for a year without hard labour (*u*).

Obtaining execution of security etc. by fraud.

1379. A person is by statute guilty of a misdemeanour (*x*) who, with intent to defraud or injure any other person by any false pretence, fraudulently causes or induces any other person to execute, make, accept, indorse, or destroy the whole or any part of any valuable security, or to write, impress, or affix his name or the name of any other person, or of any company, firm, or copartnership, or the seal of any body corporate, company, or society upon any paper or parchment, in order that the same may be afterwards made or converted into or used or dealt with as a valuable security.

False pretences and larceny.

1380. If a person is tried on an indictment for the misdemeanour of obtaining property by false pretences, and the evidence shows that his offence amounts to larceny, he may, nevertheless, be convicted of the misdemeanour. If, however, he is tried for the misdemeanour, he cannot afterwards be prosecuted for larceny on the

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person whose name is to the jurors unknown, a certain sum of money with intent to cheat him, the said H. F. B. of the same." It does not seem that the provisions of s. 88 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), apply to this indictment. It seems, therefore, that an allegation to defraud a particular person is necessary. To constitute the offence there must be fraud or an unlawful device or ill practice during the game etc.; it is not sufficient, if fraud is resorted to in order to induce the prosecutor to play in the game (*R.* v. *Bailey* (1850), 4 Cox, C. C. 390). It is not clear whether it is necessary to allege in the indictment the name of the game in the course of which the fraud is used, but the evidence must show that there was some "game, sport, pastime, or exercise" played. Tossing with coins, if not a game or sport, is a "pastime or exercise" within the statute (*R.* v. *O'Connor* (1881), 15 Cox, C. C. 3, C. C. R.). A bet over a conjuring trick or sleight of hand or other trick is not within the statute (*R.* v. *Hudson* (1860), Bell, C. C. 263). If several persons join together in a fraudulent design to cheat some other person, as by inducing such person by fraud to play in a game or by any other act which if done by one person is not within the statute, an indictment will lie against the confederates for a conspiracy to defraud (*R.* v. *Bailey* (1850), 4 Cox, C. C. 390).

(*t*) Witchcraft Act, 1735 (9 Geo. 2, c. 5), s. 4. A person professing to tell fortunes "to deceive or impose upon" any person is also punishable as a rogue and vagabond under the Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4 (see *Penny* v. *Hanson* (1887), 18 Q. B. 478; *Monck* v. *Hilton* (1877), 2 Ex. D. 268).

(*u*) Witchcraft Act, 1735 (9 Geo. 2, c. 5), s. 4. The offender may also be ordered by the court before which he is tried to give sureties for good behaviour in such sum and for such time as the court may think proper, and if so ordered, may be imprisoned until such sureties are given (*ibid.*). The offence is, it seems, triable at quarter sessions.

(*x*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 90. See *R.* v. *Gordon* (1889), 23 Q. B. D. 354, C. C. R.; s. 88 of the Larceny Act, 1681 (24 & 25 Vict. c. 96), does not apply to an indictment for this offence, and it is necessary to name in such an indictment the person whom the defendant intended to defraud (Archbold, Criminal Pleading, 23rd ed., 617). In other respects *mutatis mutandis* the indictment will be in the same form as an indictment for obtaining money etc. by false pretences, see p. 694, *ante*.

same facts (*y*). The result is the same if the evidence shows that the offence amounted to some felony other than larceny (*a*).

Essentials of the offence.

1381. The essential ingredients of the misdemeanour of obtaining goods etc. by false pretences are four—there must be a false pretence made by the defendant to some other person, there must be knowledge on the part of the defendant that the pretence was false, there must be an obtaining of money, or a chattel, or a valuable security, by means of such false pretences, and there must be an intent to defraud (*b*).

The false pretence must be of a fact that exists or has existed; a pretence that something will be done or will occur in the future is not of itself sufficient (*c*).

(*y*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 88; *R.* v. *King* (1896), 66 L. J. (Q. B.) 87, C. C. R.; [1897] 1 Q. B. 214, C. C. R.; as to the difference between larceny and obtaining by false pretences, see p. 689, *ante*. If there is any doubt whether an offence amounts to larceny or false pretences, the better course is to indict the offender for false pretences, as on an indictment for false pretences the offender may be found guilty, if the false pretences are proved, although the facts amount to larceny, but on an indictment for larceny the offender cannot be found guilty, if the facts amount to false pretences. On an indictment for false pretences, if the facts show larceny, the defendant cannot be convicted, unless the alleged pretences are proved (*R.* v. *Bulmer* (1864), Le. & Ca. 476).

(*a*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 12. The court may, if it thinks fit, in such a case discharge the jury, and direct that the defendant be indicted for the felony.

(*b*) *R.* v. *Aspinall* (1876), 2 Q. B. D. 48, C. A., at p. 57.

(*c*) "A mere lie about an existing fact told for a fraudulent purpose" is a false pretence (*R.* v. *Woolley* (1850), 1 Den., 559, *per* ALDERSON, B., at p. 564); see Summary Jurisdiction Act, 1899 (62 & 63 Vict. c. 22), s. 3. The following are instances of false statements or representations which have been held to be pretences of existing or past facts: That the defendant had been intrusted by the Duke of L. to take some horses from Ireland to London and had been detained so long by contrary winds that his money was spent (*R.* v. *Villeneuve* (1778), 3 Term Rep., cited at p. 104; see *R.* v. *Willot* (1871), 12 Cox, C. C. 68, C. C. R.); that one of the defendants had made a bet of 500 guineas "with a colonel of the army then at Bath" that A. B. would run ten miles in an hour (*Young* v. *R.* (1789), 3 Term Rep. 98); that the defendant, a carrier, had delivered goods to the consignee, who had given a receipt for them, but that the defendant had lost or mislaid the receipt (*R.* v. *Airey* (1801), 2 East, 30); that a certain document was a lease for nine years of a certain house (*R.* v. *Gruby* (1845), 1 Cox, C. C. 249); that the defendant had sufficient funds to pay a bill for £2,638 except the sum of £300 (*R.* v. *Crossley* (1837), 2 Mood. & R. 17); that the defendant was a single man and able to contract a valid marriage with the prosecutrix, and was in a position to maintain an action for breach of promise of marriage against the prosecutrix (*R.* v. *Copeland* (1842), Car. & M. 516); that the defendant was Mr. H. (*R.* v. *Bloomfield* (1842), Car. & M. 537); that the defendant was a captain in the Dragoon Guards (*R.* v. *Hamilton* (1845), 1 Cox, C. C. 244); that a club for which the defendant was canvassing was "a very strong club" and had £7,000 in the bank (*R.* v. *Welman* (1853), Dears. C. C. 188); that a customer for whom the defendant had agreed to make false teeth had refused to pay him any money on account (*R.* v. *Jones* (1853), 6 Cox, C. C. 467); that the defendant wanted some goods for J. S., who was a person to whom the defendant "durst trust £1,000" (*R.* v. *Archer* (1855), Dears. C. C. 449); that a house had been built on some land which the defendant wished to mortgage (*R.* v. *Burgon* (1856), Dears. & B. 11); that mortgaged property was unincumbered (*R.* v. *Meakin* (1869), 11 Cox, C. C. 270, C. C. R.; and see *R.* v. *Sampson* (1885), 52 L. T. 772); that a £1 note was a £5 note (*R.* v. *Jessop* (1858), Dears. & B. 442); that a "flash note" was a genuine note (*R.* v. *Wells* (1840), cited at Dears. & B.

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Indictment and evidence.

1382. An indictment for obtaining property by a false pretence must allege that the defendant made a certain false pretence, and

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36; *R.* v. *Coulson* (1850), 1 Den. 592); that a worthless cheque or note was a valuable security (*R.* v. *Dowey* (1868), 37 L. J. (M. C.) 52, C. C. R.; *R.* v. *Hazelton* (1874), L. R. 2 C. C. R. 134; *R.* v. *Jarman* (1878), 14 Cox, C. C. 111, C. C. R.; see *R.* v. *Smith* (1854), 6 Cox, C. C. 314, and *R.* v. *Walne* (1870), 11 Cox, C. C. 647, C. C. R.); that a forged order for the payment of money was genuine (*R.* v. *Prince* (1868), L. R. 1 C. C. R. 150); that a person who lived in a large house "down the street," and who had a daughter married some time back, had been "at the defendant about some carpet," and had asked him to procure a piece of carpet (*R.* v. *Burnsides* (1860), Bell, C. C. 282); that the defendant was authorised to order linen on behalf of a hospital (*R.* v. *Franklin* (1864), 4 F. & F. 94); that the defendant had power to bring back the prosecutrix's husband, who had deserted her (*R.* v. *Giles* (1865), Le. & Ca. 502); that the defendant could communicate with the spirits of the dead (*R.* v. *Lawrence* (1877), 36 L. T. 404); that the defendant was carrying on a *bonâ fide* business, or a *bonâ fide* extensive business (*R.* v. *Crab* (1868), 11 Cox, C. C. 85, C. C. R.; *R.* v. *Cooper* (1877), 2 Q. B. D. 510, C. C. R.; *R.* v. *King*, [1897] 1 Q. B. 214, C. C. R.; *R.* v. *Rhodes*, [1899] 1 Q. B. 77, C. C. R., and see *R.* v. *Randell* (1887), 16 Cox, C. C. 335, C. C. R.); that a particular amount of money was owing from the prosecutor (or someone else) to the defendant (or someone else) (*R.* v. *Woolley* (1850), 1 Den. 559; *R.* v. *Leonard* (1848), 1 Den. 304; *R.* v. *Barnes* (1850), 2 Den. 59; *R.* v. *Witchell* (1798), 2 East, P. C. 830; *R.* v. *Taylor* (1883), 15 Cox, C. C. 265; but see *R.* v. *Oates* (1855), Dears. C. C. 459); that the defendant had done work which he had not done (*R.* v. *Rigby* (1858), 7 Cox, C. C. 507; *R.* v. *Hunter* (1867), 10 Cox, C. C. 642, C. C. R.); that a greater weight of goods had been delivered than was actually the case (*R.* v. *Eagleton* (1855), Dears. C. C. 376, 515); that defendant was collecting information for a new directory which W. & Co. were getting up (*R.* v. *Speed* (1881), 15 Cox, C. C. 24, C. C. R.); that defendant had got a carriage and pair and expected it down "that day or the next" and that he had a large property abroad (*R.* v. *Howarth* (1870), 11 Cox, C. C. 588, C. C. R.). See also *R.* v. *Paynter* (1908), 25 T. L. R. 191, C. C. A., where the false pretence was that persons could earn money by writing. Many cases of false pretences arise when a contract is entered into in consequence of the false pretence (*R.* v. *Kenrick* (1843), 5 Q. B. 49; *R.* v. *Asterley* (1835), 7 C. & P. 191; *R.* v. *Abbott* (1847), 1 Den. 273; *R.* v. *Dark* (1847), 1 Den. 276; *R.* v. *Garlick* (1847), 1 Den. 276; *R.* v. *Goss* (1860), Bell, C. C. 208; *R.* v. *Martin* (1867), L. R. 1 C. C. R. 56). Mere commendation, however extravagant, of an article or of a business offered for sale is not a false pretence (see *R.* v. *Bryan* (1857), Dears. & B. 265; *R.* v. *Williamson* (1869), 11 Cox, C. C. 328; *R.* v. *Levine* (1867), 10 Cox, C. C. 374). It is doubtful, however, whether these cases are now of any authority; see 2 Russell on Crimes, 6th ed., 498; and *R.* v. *Lewis* (1869), 11 Cox, C. C. 404. A misstatement of fact as to the quality or weight of goods may amount to a false pretence (*R.* v. *Ardley* (1871), 40 L. J. (M. C.) 85, C. C. R.; *R.* v. *Foster* (1877), 2 Q. B. D. 301, C. C. R.; *R.* v. *Kenrick, supra*; *R.* v. *Sherwood* (1857), Dears. & B. 251; *R.* v. *Lee* (1864), Le. & Ca. 418; *R.* v. *Dundas* (1853), 6 Cox, C. C. 380; *R.* v. *Suter* (1867), 10 Cox, C. C. 577, C. C. R.; *R.* v. *Ball* (1842), Car. & M. 249; *R.* v. *Stevens* (1844), 1 Cox, C. C. 83; *R.* v. *Roebuck* (1856), Dears & B. 24). The decisions to the contrary effect of Lord ELLENBOROUGH, C.J., in *R.* v. *Pywell* 1816), 1 Stark. 402, and of LITTLEDALE, J., in *R.* v. *Codrington* (1825), 1 C. & P. 661, are not now authorities (see *R.* v. *Kenrick* (1843), 5 Q. B. 49, at p. 64; *R.* v. *Ward* (1844), 1 Cox, C. C. 101, at p. 102; *R.* v. *Bates* (1848), 3 Cox, C. C. 201). The false pretence may be by conduct with or without the use of any spoken or written words (*R.* v. *Barnard* (1837), 7 C. & P. 784; *R.* v. *Story* (1805), Russ. & Ry. 81; *R.* v. *Jackson* (1813), 3 Camp. 370; *R.* v. *Freeth* (1807), Russ. & Ry. 127; *R.* v. *Goss* (1860), Bell, C. C. 208; *R.* v. *Hazelton* (1874), L. R. 2 C. C. R. 134; *R.* v. *Murphy* (1876), 13 Cox, C. C. 298, C. C. R. (Ir.); *R.* v. *Bull* (1877), 13 Cox, C. C. 608, C. C. R.; *R.* v. *Jarman* (1878), 14 Cox, C. C. 111, C. C. R.; *R.* v. *Hunter* (1867), 10 Cox, C. C. 642, C. C. R.; *R.* v. *Powell* (1884), 15 Cox, C. C. 568, C. C. R.; *R.* v. *Sampson* (1885), 49 J. P. 807, C. C. R.). But there must be some deceit spoken, written or acted, to constitute a false pretence (see *R.* v. *Jones*, [1898] 1 Q. B. 119,

must expressly allege that the pretence was false (*d*); it must set out the false pretence sufficiently (*e*). It is sufficient, if the effect of the pretence is set out; it is not necessary to state the words actually used (*f*).

C. C. R.). A promise to do something in the future (*e.g.*, a promise to pay for goods on delivery) is not a false pretence (*R.* v. *Hall* (1821), Russ. & Ry. 463; *R.* v. *Burrows* (1869), 11 Cox, C. C. 258, C. C. R.; *R.* v. *Woodman* (1879), 14 Cox, C. C. 179; *R.* v. *Johnston* (1842), 2 Mood. C. C. 254). In *R.* v. *Douglas* (1836), 1 Mood. C. C. 462, an indictment alleging as a false pretence that the defendant would tell the prosecutor where certain horses that had strayed were, if the prosecutor would give defendant a sovereign, was held to be bad; the indictment ought to have alleged as the false pretence that the defendant knew where the horses were, see *R.* v. *Lee* (1863), Le. &. Ca. 309 (where it was held that a statement that the defendant "was going to pay" or "had got to pay his rent" was not a false pretence of an existing fact); compare *R.* v. *Henshaw* (1864), Le. & Ca. 444; *R.* v. *Johnston*, *supra*). But if a misrepresentation of an existing or past fact is accompanied by a promise, the promise does not prevent the misrepresentation from being a false pretence (*R.* v. *Fry* (1858), Dears. & B. 449; *R.* v. *West* (1858), Dears. & B. 575; *R.* v. *Bates* (1848), 3 Cox, C. C. 201; *R.* v. *Jennison* (1862), Le. & Ca. 157). A representation may be future in form, but may none the less be a representation as to an existing fact, *e.g.*, a statement that a cheque would be paid on presentation is a statement as to an existing fact, and amounts to a representation that the cheque is a good one (*R.* v. *Hughes* (1858), 1 F. & F. 355; and see *R.* v. *Hazelton* (1874), L. R. 2 C. C. R. 134; *R.* v. *Giles* (1865), Le. & Ca. 502). In *R.* v. *Gordon* (1889), 23 Q. B. D. 354, C. C. R., it was held that a representation that "the defendant was prepared to pay to the prosecutor £100" was a false pretence of an existing fact, *sed quære*, see *R.* v. *Johnston* (1842), 2 Mood. C. C. 254.

(*d*) The following is the form of an indictment for false pretences. "The Jurors for our lord the King upon their oath present that A. B. [on the —— day of —— in the year of Our Lord] unlawfully [knowingly and designedly] did falsely pretend to C. D. that he the said A. B. was then in the employ of E. F. by means of which said false pretences the said A. B. did then unlawfully obtain from the said C. D. money to the amount of £1 with intent to defraud whereas in truth and in fact the said A. B. was not then in the employ of the said E. F. as he the said A. B. at the time when he did so falsely pretend as aforesaid well knew." The words "knowingly and designedly" are not essential; an indictment without an allegation of knowledge that the pretences are false is cured by verdict (*R.* v. *Bowen* (1849), 13 Q. B. 790. *Quære* whether to allege that the defendant did *feloniously* pretend makes the indictment bad (*R.* v. *Walker* (1834), 6 C. & P. 657).

(*e*) *R.* v. *Mason* (1788), 2 Term Rep. 581; *R.* v. *Oates* (1855), Dears. C. C. 459; *R.* v. *Henshaw* (1864), Le. & Ca. 444; see *R.* v. *Airey* (1801), 2 East, 30. An indictment which omits to set out the particular false pretence alleged is bad, if the objection is taken before verdict, but if no such objection is taken and there is a verdict of guilty on such an indictment, the defect is cured by verdict (*R.* v. *Goldsmith* (1873), L. R. 2 C. C. R. 74; see *Heymann* v. *R.* (1873), L. R. 8 Q. B. 102). It is not necessary to set out the false pretences in an indictment for a conspiracy to obtain by false pretences (*R.* v. *Gill* (1818), 2 B. & Ald. 204), or for receiving goods obtained by false pretences (*Taylor* v. *R.*, [1895] 1 Q. B. 25. An allegation that A. and B. made a certain false pretence is satisfactorily proved if it is shown that A. and B. were acting together in a fraudulent design, and that A., in the absence of B., made the alleged pretences (*R.* v. *Kerrigan* (1864), 9 Cox, C. C. 441, C. C. R.; *R.* v. *Moland* (1843), 2 Mood. C. C. 276). As to false pretences by an agent, see *R.* v. *Boyd* (1851), 5 Cox, C. C. 502; *R.* v. *Butcher* (1858), Bell, C. C. 6.

(*f*) *R.* v. *Scott* (1832), 2 Russell on Crimes, 6th ed., 532. If the false pretence relates to a written instrument, the instrument must be sufficiently described, but it is not necessary to set out the instrument (*R.* v. *Coulson* (1850), 1 Den. 592; *R.* v. *Brown* (1847), 2 Cox, C. C. 348; but see *R.* v. *Wickham* (1839), 10 Ad. & El. 34).

SECT. 2. Obtaining Property by Fraud.

The false pretence must be proved as it is laid in the indictment, and if there is a substantial variance between the pretence laid and that proved, there can be no conviction (*g*).

The indictment must mention or describe the person to whom it is alleged that the defendant made a false pretence, and must name the person from whom the property was obtained by means of such false pretence (*h*). It must allege, and the evidence must

(*g*) *R.* v. *Plestow* (1808), 1 Camp. 494 (where the pretence laid was that the "defendant had paid" a sum of money into the Bank of England and the statement proved was that "the money had been paid at the bank"; and the variance was held to be fatal); *R.* v. *Butcher* (1858), Bell, C. C. 6 (where the pretence alleged was that the defendant was sent by A. B. and C. D. to receive moneys payable to them and the pretence proved was a representation by a boy, an innocent agent of the defendant, that he (the boy) had authority to receive the moneys, and the conviction was quashed); *R.* v. *Bailey* (1852), 6 Cox, C. C. 29 (where the pretence laid was that the defendant had been to H. on behalf of X. Y., and had served a certain order of affiliation on S. T., and the pretence proved was that the defendant had been with the order to H. to serve S. T., and had left it with S. T.'s landlord, as S. T. was out, and it was held that the variance was fatal, and that there was no power to amend the indictment under the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 1; *R.* v. *Ward* (1844), 1 Cox, C. C. 101 (where the pretence laid was that certain horses belonged to a family named L. that lived at S., and that Mr. L. was dead, and the pretence proved was that the family lived two miles from S., and that the elder member of the family was dead, and it was held that the variance was fatal); *R.* v. *Bulmer* (1864), Le. & Ca. 476 (where the pretence laid was that the defendant was the servant of a person named Hardman, and the pretence proved was that the defendant was the servant of a person named Harding, and the conviction was quashed; it seems that this was a case which could have been cured by amendment, but no application to amend appears to have been made (see 2 Russell on Crimes, 6th ed., 542). In *R.* v. *Colucci* (1861), 3 F. & F. 104, the defendant was alleged to have pretended that a certain parcel contained all the letters written from the prosecutrix to the defendant, and it was held that this allegation was sufficiently proved, although it was shown that some of the letters had been destroyed by the prosecutrix. In *R.* v. *Kealey* (1851), 2 Den. 68, the indictment alleged that certain false pretences were made to B. and others, and it was shown that the pretences were made to B. alone, and it was held that there was no variance. If the false pretence is contained in a written document, the document must be produced or its non-production accounted for; if it is proved to be lost, secondary evidence of its contents can be given (*R.* v. *Chadwick* (1833), 6 C. & P. 181). If a defendant orally made the pretences alleged in the indictment, evidence of such oral pretences can be given, although for the purpose of carrying out the fraud a deed was afterwards entered into and the deed alleged a consideration for parting with the money different from that contained in the oral pretences (*R.* v. *Adamson* (1843), 2 Mood. C. C. 286).

(*h*) If there is no averment of any person to whom the false pretence was made and from whom the property was obtained, the indictment is bad (*R.* v. *Sowerby*, [1894] 2 Q. B. 173, C. C. R.). But it is sufficient to aver that the pretence was made to "the subjects of His Majesty the King" (*R.* v. *Silverlock*, [1894] 2 Q. B. 766, C. C. R.). It is not necessary to allege or to prove that the pretence was made to the person from whom the property was obtained (*R.* v. *Brown* (1847), 2 Cox, C. C. 348, where *R.* v. *Tully* (1840), 9 C. & P. 227, was doubted; see also *R.* v. *Dent* (1843), 1 Car. & Kir. 249). If the pretence is made to some other person than the one from whom the property is obtained, it must be proved that the pretence operated upon the mind of the person from whom the property was obtained (*R.* v. *Butcher*, *supra*, WILLIAMS, J., at p. 19). As to a pretence made to a servant or agent, see *R.* v. *Douglass* (1808), 1 Camp. 212. An allegation that property was obtained from the prosecutor is proved by evidence showing that it was obtained from his agent (*R.* v. *Moseley* (1861), Le. & Ca. 92). An allegation that a false pretence was made to A. B. (the secretary of a friendly society), and that by means of this false pretence money

establish, that the defendant by means of the alleged false pretences, unlawfully obtained either a chattel, money, or valuable security, as the case may be (*i*), which must be sufficiently described (*k*), but it is not necessary to allege any ownership thereof (*l*).

It is not necessary to allege that the alleged false pretence was made with the intention of obtaining the property which was obtained, or to show how the false pretence was calculated to effect or had effected the obtaining of the property, or to state that there was no pretence besides the one or more charged; but the evidence must show that the false pretence was made for the purpose of obtaining the property etc. (*m*).

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was obtained from A. B., was held to be established by evidence that A. B. accompanied the defendant to C. D. (the treasurer of the society), who paid the money to the defendant (*R.* v. *Rouse* (1849), 4 Cox, C. C. 7).

(*i*) A chattel, to come within the statute, must be something which is the subject of larceny (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 88). A dog is not a chattel which is the subject of larceny, and, it seems, is not a chattel within the statute as to false pretences (*R.* v. *Robinson* (1859), Bell, C. C. 34). The half of a bank note or a re-issuable note that has been satisfied may be properly described as a chattel (*R.* v. *Vyse* (1829), 1 Mood. C. C. 218; *R.* v. *Mead* (1831), 4 C. & P. 535; see *R.* v. *Clarke* (1810), 2 Leach, 1036). A railway passenger ticket is a chattel within the statute, although it has to be delivered up at the end of the journey (*R.* v. *Boulton* (1849), 1 Den. 508; and see *R.* v. *Beecham* (1851), 5 Cox, C. C. 181; but see *R.* v. *Kilham* (1870), L. R. 1 C. C. R. 261). It is not necessary that the chattel should be in existence at the time that the pretence is made, so long as the subsequent obtaining of the chattel is directly connected with the false pretence (*R.* v. *Martin* (1867), L. R. 1 C. C. R. 56).

(*k*) In *R.* v. *Douglass* (1808), 1 Camp. 212, it was held that a "basket of fish" might be described in an indictment as a "parcel." As to the description of money, see Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 18, p. 340, *ante*. The expression "valuable security" includes any order, Exchequer acquittance, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of the United Kingdom, or of Great Britain or of Ireland, or of any foreign state, or in any funds of any body corporate, company or society, whether within the United Kingdom or in any foreign state or country, or to any deposit in any bank, and also includes any debenture, deed, bond, bill, note, warrant or order, or other security whatsoever, for money or for payment of money, whether of the United Kingdom, or of Great Britain or of Ireland, or of any foreign state, and any document of title to land or goods. The expression "document of title to land" includes any deed, map, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title or any part of the title to any real estate, or to any interest in or out of any real estate (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 1; see *R.* v. *Greenhalgh* (1854), Dears. C. C. 267). A post-office money order is a valuable security within the meaning of the last-mentioned section (Post Office Act, 1908 (8 Edw. 7, c. 48), s. 59).

(*l*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 88.

(*m*) *Hamilton* v. *R.* (1846), 9 Q. B. 271; *R.* v. *Brown* (1847), 2 Cox, C. C. 348; and see *R.* v. *Wakeling* (1823), Russ. & Ry. 504, where, on a pauper being told to go to work, the pauper falsely said he had no shoes, and thereupon the overseer gave him a pair, and it was held that the false statement was rather a false excuse for not working than a false pretence to obtain goods, and that the pauper could not be convicted of obtaining the shoes by false pretences (see also *R.* v. *Stone* (1858), 1 F. & F. 311). It is immaterial that the false pretence was not originally made for the purpose of obtaining the property in question, if the false pretence was persevered in or reiterated with that purpose (*R.* v. *Hamilton* (1845), 1 Cox, C. C. 244).

SECT. 2. Obtaining Property by Fraud.

Obtaining.

It is not necessary to allege the time when, or the place where, the pretence was made, or the chattel etc. obtained (*n*).

1383. The chattel, money, or valuable security must be obtained by the defendant, and obtained by means of the false pretences alleged (*o*). If the defendant with fraudulent intent causes the chattel etc. to be delivered to anyone else than the defendant for the use or benefit or on account of the defendant or of any other person, the defendant is deemed to have "obtained" the chattel (*p*).

It is essential for the completion of the offence that there should have been an intention to deprive the owner wholly of the property in the chattel; therefore to obtain by false pretences the use of a chattel other than money, by way of loan for a limited time, is not an offence within the statute (*q*). But to obtain the loan of money is, it seems, to obtain money within the statute (*r*); and this is the case also with regard to the loan of a valuable security, except where there is an expectation that the identical security will be returned (*s*).

To obtain a gift of money etc. by a false pretence (*e.g.*, by a false tale contained in a begging letter) is within the statute (*t*).

Although a false pretence may have been made and although property may have been obtained with a fraudulent intent, yet if the property was not obtained by means of the false pretence alleged in the indictment there can be no conviction (*a*).

(*n*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), ss. 23, 24.

(*o*) If the chattel etc. is not actually obtained, but the defendant attempted to obtain it by false pretences, he can be convicted of the attempt (see *R.* v. *Button*, [1900] 2 Q. B. 597, C. C. R.).

(*p*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 89. This section in effect supersedes the narrow interpretation given to the word "obtain" in *R.* v. *Garrett* (1853), Dears. C. C. 232 (see 2 Russell on Crimes, 6th ed., 468). The section also meets such cases as *R.* v. *Martin* (1859), 1 F. & F. 501, and *R.* v. *Wavell* (1829), 1 Mood. C. C. 224, where the charge was of obtaining credit in account by false pretences, for which there was no provision under the earlier Acts; see also as to obtaining credit by fraud, title BANKRUPTCY AND INSOLVENCY, Vol. II., p. 350.

(*q*) *R.* v. *Kilham* (1870), L. R. 1 C. C. R. 261.

(*r*) See *R.* v. *Burgon* (1856), Dears. & B. 11, *per* CROMPTON, J., at p. 20.

(*s*) *Ibid.*

(*t*) *R.* v. *Jones* (1850), 1 Den. 551.

(*a*) *R.* v. *Jones* (1884), 15 Cox, C. C. 475, C. C. R.; *R.* v. *Bulmer* (1864), 9 Cox, C. C. 492, C. C. R.; *R.* v. *Dale* (1836), 7 C. & P. 352; *R.* v. *Dent* (1843), 1 Car. & Kir. 249; *R.* v. *Butcher* (1858), Bell, C. C. 6; *R.* v. *Hunt* (1861), 8 Cox, C. C. 495; *R.* v. *Cosnett* (1901), 20 Cox, C. C. 6, C. C. R.

The pretences alleged and proved must not be too remote from the obtaining (see *R.* v. *Gardner* (1856), Dears. & B. 40; *R.* v. *Bryan* (1861), 2 F. & F. 567; but see also as to these two cases *R.* v. *Martin* (1867), 36 L. J. (M. C.) 20, C. C. R., at p. 23, and *R.* v. *Burton* (1886), 16 Cox, C. C. 62, C. C. R.). The false pretences may be made on several different occasions in different conversations or communications, if such conversations can be reasonably connected together (*R.* v. *Welman* (1853), Dears. C. C. 188). As to a continuing false pretence, see *R.* v. *Greathead* (1878), 14 Cox, C. C. 108, C. C. R. If a person enters in a race in a false name and obtains a long start and wins the race, he may be convicted of attempting to obtain the prize by false pretences (*R.* v. *Button*, [1900] 2 Q. B. 597, C. C. R., following *R.* v. *Dickenson* (1879), Roscoe, Criminal Evidence, 13th ed., 408, and disapproving of *R.* v. *Larner* (1880), 14 Cox, C. C. 497). The false pretence must be made before the property is obtained (*R.* v. *Brooks* (1859), 1 F. & F. 502; and see *R.* v. *Steels* (1867), 11 Cox, C. C. 5, C. C. R.). If a Treasury

It is sufficient if part only of the alleged false pretence is proved, so long as what is proved operated on the mind of the prosecutor (*b*).

It is immaterial that in parting with the chattel etc. the prosecutor's mind was influenced by other circumstances as well as by the false pretence (*c*), or that the prosecutor had the means of finding out whether the pretence was true or not (*d*).

The indictment must allege, and the evidence must show, that the act of making a false pretence and obtaining property thereby was done with intent to defraud (*e*).

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minute authorising the payment of money is obtained by means of a false pretence, and the money is paid, the money is obtained by the false pretence (*R.* v. *Cooke* (1858), 1 F. & F. 64). A misrepresentation of the state of accounts between a defendant and his partner in business, followed by the payment of money by the partner to the defendant, is not an obtaining of money by false pretences, as the partner still has rights over the money (*R.* v. *Evans* (1862), Le. & Ca. 252; and see *R.* v. *Crosby* (1843), 1 Cox, C. C. 10). If a person is induced by false and fraudulent allegations to enter into a partnership and to advance money, an indictment will lie (*R.* v. *Adamson* (1843), 2 Mood. C. C. 286); but if the contract is not rescinded, and money is advanced as part of the capital by the prosecutor, this is not an obtaining of money within the statute (*R.* v. *Watson* (1857), Dears. & B. 348, at p. 362). If at the time when a chattel is obtained the prosecutor knew that the pretence was false, the defendant cannot be convicted of obtaining the chattel by false pretences (*R.* v. *Mills* (1857), Dears. & B. 205; but see *R.* v. *Ady* (1835), 7 C. & P. 140), but may be convicted of attempting to obtain (*R.* v. *Roebuck* (1856), Dears. & B. 24; *R.* v. *Hensler* (1870), 11 Cox, C. C. 570, C. C. R.). The fact that the prosecutor believed the false pretence may be proved by asking him in the witness-box what opinion he formed as to the defendant's statement on its being made (*R.* v. *King* (1896), 66 L. J. (Q. B.) 87, C. C. R.). As to the defendant obtaining a larger sum than he asks for, see *R.* v. *Smith* (1832), 2 Russell on Crimes, 520.

(*b*) *R.* v. *Lince* (1873), 12 Cox, C. C. 451, C. C. R., *per* BOVILL, C.J., at p. 453. It is not necessary that all the pretences should be false; if any one of them is false and the mind of the prosecutor is operated upon by it, the offence is committed (*R.* v. *Ady* (1835), 7 C. & P. 140, *per* PATTESON, J., at p. 141; *R.* v. *Perrott* (1814), 2 M. & S. 379, *per* BAYLEY, J., at p. 390; *R.* v. *Hill* (1811), Russ. & Ry. 190). But in *R.* v. *Wickham* (1839), 10 Ad. & El. 34, it was held that two pretences were so connected together in the indictment that they could not be separated, and as one false pretence was insufficiently alleged, the whole indictment was quashed; see also *R.* v. *Ward* (1844), 1 Cox, C. C. 101.

(*c*) *R.* v. *Lince, supra;* see *R.* v. *Hewgill* (1854), Dears. C. C. 315, at p. 322.

(*d*) See *R.* v. *Jessop* (1858), Dears. & B. 442; *R.* v. *Woolley* (1850), 1 Den. 559, at p. 564; *R.* v. *Wickham, supra,* at p. 37 (disapproving of *R.* v. *Jones* (1704), 2 Ld. Raym. 1013). "There are indeed cases where the pretence is so very foolish that it is difficult to say that an imposition is practised; but still, who is to give the measure?" (*R.* v. *Wickham, supra*).

(*e*) The allegation of the intent to defraud is essential; the omission of this allegation makes an indictment bad even after verdict, and is not amendable (*R.* v. *James* (1871), 12 Cox, C. C. 127). It is not necessary to allege or to prove an intent to defraud any particular person (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 88). Proof of the falsity of the pretence and of the defendant's knowledge that it was false is *primâ facie* evidence of an intent to defraud, but is not sufficient if the facts show that there was no such intent; thus in *R.* v. *Williams* (1836), 7 C. & P. 354, the defendant, by a pretence which he knew to be false, obtained certain goods from a person who owed and would not pay money to the defendant's master, and the defendant made the false pretence in order to secure to his master the means of enforcing payment of the debt, and COLERIDGE, J., directed the jury that, if they were satisfied that the defendant did the act only to put it in his master's power to compel the prosecutor to pay a just debt, they ought to acquit the defendant, and the defendant was accordingly acquitted. See also *R.* v. *Stone* (1858), 1 F. & F. 311. Unless the jury are

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Negativing the false pretence.

1384. The indictment must particularly negative the alleged false pretence. An indictment is insufficient if it merely alleges that the defendant falsely pretended that certain facts were true; it must go on to allege that the particular statements made were untrue (*f*).

The evidence must show that the alleged false pretences or some of them were untrue, and that those which were proved to be untrue affected the prosecutor's mind in parting with his property (*g*).

After negativing the false pretences the indictment usually avers that the defendant at the time of making the false pretences knew that the pretences were false (*h*). It is not clear whether this averment is necessary, but it is necessary that the evidence should show that the defendant knew that the pretences he made were false (*i*).

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satisfied that there was an intent to defraud on the part of the defendant, the charge fails (*R.* v. *Gray* (1891), 17 Cox, C. C. 299, C. C. R.). If, however, the jury find that the defendant made a pretence which was false to his knowledge, and that he made it to induce the prosecutor to part with goods, and that the prosecutor was induced to part with the goods by the false pretence, a finding by the jury that the defendant at the time he made the pretence and obtained the goods intended to pay the prosecutor for the price of them, when it should be in the defendant's power, does not negative the intention to defraud, and on such a finding the defendant should be convicted (*R.* v. *Naylor* (1865), 10 Cox, C. C. 149, C. C. R.). Obtaining property by false pretences may be a crime, although the defendant does not intend ultimately to cheat the person from whom the property was obtained (*R.* v. *Hamilton* (1845), 1 Cox, C. C. 244, *per* POLLOCK, C.B., at p. 247; *R.* v. *Naylor*, *supra*). In order to prove an intent to defraud evidence may be given that the defendant, either before or after the acts charged against him, obtained or attempted to obtain property from the defendant or other persons by means of similar false pretences (*R.* v. *Roebuck* (1856), Dears. & B. 24; *R.* v. *Francis* (1874), 43 L. J. (M. C.) 97, C. C. R., not following *R.* v. *Holt* (1860), Bell, C. C. 280; *R.* v. *Cooper* (1875), 1 Q. B. D. 19, C. C. R.; *R.* v. *Rhodes*, [1899] 1 Q. B. 77, C. C. R.; *R.* v. *Ollis*, [1900] 2 Q. B. 758, C. C. R.; *R.* v. *Wyatt*, [1904] 1 K. B. 188, C. C. R.).

(*f*) *R.* v. *Perrott* (1814), 2 M. & S. 379; *R.* v. *Kelleher* (1877), 14 Cox, C. C. 48, C. C. R. (Ir.). The insertion of the word "falsely" ("falsely pretended") is not essential if the false pretences are expressly negatived (*R.* v. *Airey* (1801), 2 East, 30). The usual form for the negativing of the false pretences commences with the words "whereas in truth and in fact" and goes on to state with particularity that each of the alleged pretences is not true (see Saunders, Precedents of Indictments, 3rd ed., 112). As to what is sufficient evidence to negative false pretences, see *R.* v. *Baroisse* (1852), 5 Cox, C. C. 559; *R.* v. *Walker* (1844), 1 Cox, C. C. 99; *R.* v. *Wenham* (1866), 10 Cox, C. C. 222; *R.* v. *Finch* (1908), 72 J. P. 102, C. C. R.

(*g*) See p. 698, *ante*.

(*h*) See Saunders, Precedents of Indictments, 3rd ed., 110, 112—137. The usual form of the averment is "as he the said A. B. well knew at the time when he did so falsely pretend as aforesaid."

(*i*) In cases under stat. (1757) 30 Geo. 2, c. 24, s. 1, it was usual to aver that the defendant did "knowingly and designedly" falsely pretend, as those words were in the statute; see the forms of indictments, 2 Starkie, Criminal Pleading, 2nd ed., 496; 3 Chitty, Criminal Law, 1007. Those forms do not contain the words "as he the said A. B. well knew etc.," for the *scienter* had been already laid by the use of the words "knowingly and designedly" in the earlier part of the indictment. The stat. (1826) 7 & 8 Geo. 4, c. 29, s. 53, omitted the words "knowingly and designedly" from the description of the offence. The forms of indictment under that statute do not contain the words "knowingly and designedly," and do not allege that the defendant knew that the pretences were false (Matthews, Digest of the Criminal Law, 1833 ed., p. 471). In *R.* v. *Henderson* (1841), 2 Mood. C. C. 192, an indictment under the stat. 7 Geo. 4, c. 29, s. 53,

Joining several charges in one indictment.

1385. In an indictment for false pretences several separate offences may be charged in separate counts (*k*). But if the defendant is embarrassed by the joinder of different counts, the prosecutor may be put to his election and compelled to proceed on one count alone (*l*).

Venue.

1386. If the crime of obtaining by false pretences is begun in one county and completed in another, *e.g*, if the false pretence is made in one county and the chattel etc. is obtained in another county, the offence may be tried in either county (*m*).

If the offence is begun in one country and completed in another, it seems that the offence of obtaining can be tried in England only,

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was held bad on demurrer, because it omitted to state that the defendant knew that the pretences were false; see also *R.* v. *Wickham* (1839), 8 L. J. (M. C.) 87, *per* Lord DENMAN, C.J., at p. 89; *Hamilton* v. *R.* (1846), 9 Q. B. 271, *per* PATTESON, J., at p. 278. The decision in *R.* v. *Henderson*, *supra*, was followed in *R.* v. *Philpotts* (1843), 1 Car. & Kir 112, but was adversely criticised in *R.* v. *Bowen* (1849), 13 Q. B. 790, where an indictment which contained no express averment of the defendant's knowledge of the falsity of the pretences was held good after verdict by virtue of the Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 21; in *R.* v. *Gruby* (1845), 1 Cox, C. C. 249, it was held that an indictment without such an averment was good, although the objection was taken before verdict. It is submitted that a specific allegation of the defendant's knowledge of the falsity of the pretences is not essential (see *R.* v. *Mackarty* (1705), 2 Ld. Raym. 1179), that such knowledge is alleged by implication in the allegation of the intent to defraud. It seems clear that, even if the allegation is necessary, the omission of such an allegation is cured by verdict (*R.* v. *Bowen*, *supra*). The knowledge of the defendant that the alleged pretence is false must be established by evidence (*R.* v. *Bowen*, *supra*, at p. 795).

(*k*) *R.* v. *Young* (1789), 3 Term Rep. 98.

(*l*) *R.* v. *Bassett* (1843), 1 Cox, C. C. 51. As to joining a number of counts for false pretences in one indictment, see *R.* v. *King*, [1897] 1 Q. B. 214, C. C. R., *per* HAWKINS, J., at p. 216; and as to joining counts for false pretences in the counts for conspiracy, see *R.* v. *Stoddard* (1909), 25 T. L. R. 612, C. C. A.

(*m*) Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 12; *R.* v. *Allington* (1893), 9 T. L. R. 199, C. C. R. But the offence cannot be tried in a county into which the defendant takes the property which he has obtained in another county (*R.* v. *Stanbury* (1862), Le. & Ca. 128). Before the Criminal Law Act, 1826 (7 Geo. 4, c. 64), the offence (under the stat. 30 Geo. 2, c. 24, s. 1) was only triable in the county where the chattel etc. was obtained (*R.* v. *Buttery*, cited *R.* v. *Burdett* (1820), 4 B. & Ald. 95, at p. 179). If money is obtained by false pretences, and is in consequence of the defendant's request put in a letter and posted in the county of A. and received by the defendant in the county of B., the defendant may, apart from the provisions of the Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 12, be tried either in the county of A. or in the county of B. (*R.* v. *Jones* (1850), 1 Den. 551; and see *R.* v. *Leech* (1856), Dears C. C. 642). In *R.* v. *Cooke* (1858), 1 F. & F. 64, where the defendant posted a letter containing a false pretence in Northampton and then obtained a Treasury minute, in consequence of which he obtained payment of money in Westminster, it was held that the defendant might be tried in Northamptonshire. The Criminal Law Act, 1826 (7 Geo. 4, c. 64), was not referred to in that case, but it seems that only by virtue of that Act can the decision be supported, unless the fact was, as it may very well have been, that the Treasury minute was obtained in Northampton, and therefore the money was obtained there, although it was paid in Westminster; but the case does not state where the minute was obtained, and the decision proceeds on the ground that the letter containing the false pretence was posted in Northampton. This case was referred to by DENMAN, J., in *R.* v. *Holmes* (1883), 12 Q. B. D. 23, C. C. R., but Lord COLERIDGE, C.J., there said that, although he did not intend to cast any doubt upon *R.* v. *Cooke*, his judgment was independent of it.

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if the property is obtained in England (*n*). If the false pretence is made in England and the property is obtained in another country and no part is obtained here, the offence is apparently not triable in England (*o*).

SUB-SECT. 3.—*Restitution.*

Order of restitution of property obtained by false pretences.

1387. If a person is indicted for obtaining property by false pretences by or on behalf of the owner of the property or his executor or administrator and is convicted of the offence, the court before whom such person is tried for the offence may order restitution of the property mentioned in the indictment and produced and identified in court, or of the proceeds of such property (*p*).

A person who has obtained the property of another by false pretences acquires a voidable title to the property; the original owner from whom the property was so obtained on becoming aware of the fraud can repudiate the transaction by means of which the property was obtained, and if the property or its proceeds are still in the possession of the offender or his agent, or are in the hands of a donee from the offender, or of a purchaser for value who has notice of the fraud, the ownership revests by virtue of such repudiation in the original owner.

Such owner may sue for the recovery of the property or its proceeds, or, on the conviction of the offender for obtaining the property by false pretences, he may obtain from the court which tries the offence a summary order for the restitution of the property or its proceeds (*a*).

Not against *bonâ fide* purchaser.

If before the repudiation the defrauder transfers the property for value to an innocent purchaser, such purchaser acquires a good title to the property. A subsequent repudiation by the original

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(*n*) See *R.* v. *Holmes* (1883), 12 Q. B. D. 23, C. C. R.; *R.* v. *Ellis*, [1899] 1 Q. B. 230, 1 C. C. R.; compare *R.* v. *Peters* (1886), 16 Q. B. D. 636, C. C. R.; *R.* v. *Stoddart* (1909), 25 T. L. R. 612, C. C. A.

(*o*) Such a case would be governed by the common law rule as to venue (see p. 281, *ante*; *R.* v. *Buttery*, cited *R.* v. *Burdett* (1820), 4 B. & Ald. 45, at p. 179; compare *R.* v. *Dawson* (1888), 16 Cox, C. C. 556, C. C. R.). The only cases dealing with the point (*R.* v. *Holmes*, *R.* v. *Ellis*, *R.* v. *Peters*, *supra*) are all cases where the obtaining was in England. In *R.* v. *Garrett* (1853), Dears. C. C. 232, a false pretence was made in Russia, and money was in consequence obtained in Russia, and a worthless security which affected to be payable in England was given by the defendant in Russia, and the person who received the security presented it in England, where it was dishonoured. It was held (before the Larceny Act, 1861 (24 & 25 Vict. c. 96)), that the defendant could not be convicted of attempting to obtain money in England. It seems that now, by virtue of the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 89 (see p. 696, *ante*), it would be held that in such a case there was an attempt to obtain in England.

(*p*) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 100; see p. 684, *ante*; *R.* v. *Justices of Central Criminal Court* (1886), 18 Q. B. D. 314, C. A.

(*a*) *R.* v. *George* (1901), 65 J. P. 729; see *Re Vautin, Ex parte Saffery* (1899), 2 Q. B. 549; and Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 1; *R.* v. *Justices of Central Criminal Court*, *supra*. There is a difference between stolen property and property obtained by false pretences. Stolen property, if in the hands of the thief or his agent, or of a donee from him, or of a purchaser even for value, if the sale is not in market overt, and does not come within the Factors Act, 1889 (52 & 53 Vict. c. 45), s. 9 (see p. 686, *ante*), remains the property of the owner, and no repudiation or revesting is necessary. Property obtained by fraud passes to the defrauder, who acquires a voidable title to it, and does not pass back to the original owner, until it is revested in him by repudiation of the transaction by which the property was obtained (see *R.* v. *George*, *supra*).

owner will not operate to revest the title in the original owner, even though the defrauder is convicted of obtaining the property by false pretences, and no order for the restitution of the property can in such a case be made (*b*).

SUB-SECT. 4.—*Attempts to obtain by False Pretences.*

Attempt to obtain property by false pretences.

1388. An attempt to obtain property by false pretences is a common law misdemeanour.

The punishment is a fine or imprisonment without hard labour, with or without a fine (*c*).

1389. If a defendant is indicted for obtaining property by false pretences and the evidence proves that the defendant made the alleged false pretences, that they were false, and that the defendant had an intent to defraud, but the evidence fails to prove that the defendant obtained the property or that the alleged false pretences led to the obtaining, the defendant may be convicted of the misdemeanour of the attempt to obtain by false pretences (*d*). Or a defendant may in the first instance be tried on an indictment which charges him with attempting to obtain money etc. by false pretences with intent to defraud (*e*).

(*b*) *R.* v. *Walker* (1901), 65 J. P. 729; Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 23, 24 (2). S. 24 (2) of this Act has altered the law laid down in *Bentley* v. *Vilmont* (1887), (12 App. Cas. 471, which decided that, when goods had been obtained by false pretences, and the property in them passed to an innocent purchaser from the defrauder, the title, by virtue of the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 100, revested in the original owner on the conviction of the defrauder in the same way as stolen property to which a title had been acquired by a purchaser in market overt or otherwise revested in the original owner on the conviction of the thief. The Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), only applies to personal chattels other than money, and does not apply to choses in action, while the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 100, applies not only to money but also to valuable securities. As regards money there can be no revesting, if it has passed in currency to a person who receives it in good faith and for value, and if money has so passed in currency, no order for its restitution can be made under s. 100 of the Larceny Act, 1861 (24 & 25 Vict. c. 96) (see *Moss* v. *Hancock* [1899], 2 Q. B. 111); nor can any order under that section be made as regards a valuable security which has been *bonâ fide* paid or discharged by the person or body corporate liable to pay it, or which, being a negotiable instrument, has been *bonâ fide* taken or received by transfer or delivery by some person or body corporate for a just and valuable consideration without any notice or reasonable cause to suspect that it had been stolen (Larceny Act, 1861 (24 & 25 Vict. c. 96) s. 100). *Quære* whether, if a valuable security which is not a negotiable instrument has been obtained by false pretences and has passed to an innocent purchaser for value without notice, and has not been paid or discharged as above, the property in such a security does not revest in the original owner on the conviction of the offender. As the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), does not apply to choses in action, it might be contended that to such a case *Bentley* v. *Vilmont*, *supra*, still applies; but see Attenborough, The Recovery of Stolen Goods etc., 64.

(*c*) There is no limit at common law to the term of the imprisonment; see p. 410, *ante*. The offence is triable at quarter sessions.

(*d*) Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 9. See *R.* v. *Roebuck* (1856), Dears. & B. 24; *R.* v. *Hensler* (1870), 11 Cox, C. C. 570.

(*e*) See *R.* v. *Rigby* (1858), 7 Cox, C. C. 507; *R.* v. *Eagleton* (1855), Dears. C. C. 515. The indictment should set out the false pretences and negative them, and should be in the same form as an indictment for the complete offence, except that the allegation of "did attempt to obtain" should be substituted for "did obtain" (*R.* v. *Marsh* (1849), 1 Den. 505; and *R.* v. *Wakley* (1848), 2 Cox, C. C. 484). See also *R.* v. *Dunleavy* (1909), 73 J. P. 56, C. C. A.

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The punishment for this offence is the same as for obtaining money etc. by false pretences (*f*).

False statement by money-lender.

1390. Any money-lender, or any manager, agent, or clerk of a money-lender, or a director, manager or officer of a corporation carrying on the business of a money-lender, is guilty of an indictable misdemeanour (*g*), who by any false, misleading or deceptive statement, representation, or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money or to agree to the terms on which money is borrowed or is to be borrowed.

The punishment is imprisonment with or without hard labour for a term not exceeding two years, or a fine not exceeding £500, or both (*h*).

SUB-SECT. 5.—*Fraudulent Conveyances.*

Conveyance of land to defraud creditors.

1391. Every feoffment, gift, grant, alienation, bargain, and conveyance of land, tenements, hereditaments, goods, and chattels, or any of them, or of any lease, rent, common or other profit or charge out of such lands etc., by writing or otherwise, and every bond, suit, judgment, and execution had or made with the intent to delay, hinder, or defraud creditors and others of their just debts is void as against the persons intended to be delayed, hindered, or defrauded (*i*).

All the parties to such a fraudulent conveyance etc. who wittingly and willingly put in use, avow, maintain, justify, or defend the same as true, and had or made *bonâ fide* and upon good

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(*f*) See p. 691, *ante*.

(*g*) Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 4. By money-lender is meant a person whose business is that of money-lending, or who advertises or announces himself as carrying on that business; the Act does not apply to a pawnbroker in respect of business carried on by him in accordance with the provisions of the Act relating to pawnbrokers, or to a registered friendly society within the meaning of the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), or having rules certified under ss. 2 or 4 of that Act, or under the Benefit Building Societies Act, 1836 (6 & 7 Will. 4, c. 32), or the Loan Societies Act, 1840 (3 & 4 Vict. c. 110), or under the Building Societies Act, 1874 to 1894, or to any body corporate, incorporated or empowered by a special Act of Parliament to lend money in accordance with such special Act, or to any person *bonâ fide* carrying on the business of banking or insurance, or *bonâ fide* carrying on any business not having for its primary object the lending of money, or to any body corporate for the time being exempted from registration under the Money-lenders Act, 1900, by order of the Board of Trade made and published pursuant to regulations of the Board of Trade. As to who is a money-lender, see *Newton* v. *Pyke* (1908), 25 T. L. R. 127. The Act is wider than the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 90 (see p. 703, *ante*), and includes the case of a false pretence of a future part or a promise to do something in the future. An offence like that in *R.* v. *Gordon* (1889), 23 Q. B. D. 354, C. C. R., might now be prosecuted under the Money-lenders Act, 1900 (63 & 64 Vict. c. 51).

(*h*) Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 4. See, generally, title MONEY AND MONEY-LENDING.

(*i*) Stat. (1571) 13 Eliz. c. 5, ss. 1 and 2; *Twyne's Case* (1601), 1 Smith, L. C., 11th ed., 1. For an instance of an indictment under the statute, see *R.* v. *Smith* (1852), 6 Cox, C. C. 31. It is not necessary to set out in the indictment the specific facts constituting the fraud, if the words of the statute are followed (*R.* v. *Smith*, *supra*). Communications between a client and a solicitor for the purpose of committing a fraud under the statute are not privileged from disclosure (*R.* v. *Cox* (1884), 15 Cox, C. C. 611, C. C. R.).

consideration, or who alien or assign any such lands etc. conveyed to them by such fraudulent conveyance etc., are by statute guilty of a misdemeanour (*j*).

The punishment for this offence is the forfeiture of one year's value of the lands conveyed, and the whole value of the goods and chattels, and the money to which any such fraudulent bond may relate, and imprisonment for half a year (*j*).

To defraud purchasers.

There are corresponding provisions as to conveyances etc. of lands, tenements, or other hereditaments with intent to defraud and deceive subsequent purchasers of such lands etc. (*k*).

Fraudulent concealment by seller or mortgagor.

1392. Any seller or mortgagor of land, or of any chattels real or personal, or choses in action, conveyed or assigned to a purchaser or mortgagee, or the solicitor or agent of any such seller or mortgagee, is by statute guilty of an indictable misdemeanour (*l*) who, with intent to defraud, conceals any settlement, deed, will, or other instrument material to the title, or any incumbrance, from the purchaser or mortgagee, or falsifies any pedigree upon which the title does or may depend, in order to induce such purchaser or mortgagee to accept the title offered or produced to him.

The punishment for this offence is a fine or imprisonment with or without hard labour for any term not exceeding two years, or both (*m*).

Fraudulent suppression of documents etc. in proceedings under Land Transfer Act, 1875.

1393. Any person concerned as principal or agent in proceedings before the registrar or the court under the Land Transfer Act, 1875 (*n*), is by statute guilty of an indictable misdemeanour (*o*) who, with intent to conceal the title or claim of any person, or to substantiate a false claim, suppresses, attempts to suppress, or is privy to the suppression of any document or fact.

Fraudulent entry on register under Land Transfer Act, 1875.

Everyone is by statute guilty of an indictable misdemeanour (*p*) who fraudulently procures, fraudulently attempts to procure, or is privy to the fraudulent procurement of any entry on the register under the Land Transfer Act, 1875 (*q*), or any erasure from or alteration of such register.

The punishment for each of the two last-named misdemeanours is imprisonment for a term not exceeding two years with or without hard labour, or a fine not exceeding £500 (*r*).

(*j*) See note (*i*), p. 704, *ante*.

(*k*) Stat. (1584) 27 Eliz. c. 4, ss. 1, 2; *Twyne's Case* (1601), 1 Smith, L. C., 11th ed., 1. See Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21). These offences are, it seems, triable at quarter sessions.

(*l*) Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 24; Law of Property Amendment Act, 1860 (23 & 24 Vict. c. 38), s. 8.

(*m*) Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 24. No prosecution for any offence in this section is to be commenced without the sanction of the Attorney-General or of the Solicitor-General, if the office of Attorney-General is vacant; such sanction is not to be given without such previous notice of the application for leave to prosecute to the person intended to be prosecuted as the Attorney-General or Solicitor-General may direct (*ibid.*). The offence is, it seems, triable at quarter sessions.

(*n*) 38 & 39 Vict. c. 87.

(*o*) *Ibid.*, s. 99.

(*p*) *Ibid.*, s. 100.

(*q*) 38 & 39 Vict. c. 89.

(*r*) *Ibid.*, ss. 99, 100.

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Personation.

1394. To personate another with a fraudulent purpose is an indictable misdemeanour at common law, if it amounts to a common law cheat (*s*).

Many cases of fraudulent personation are now statutory offences (*t*).

Personation of share-holders etc.

1395. It is by statute (*a*) a felony falsely and deceitfully to personate any owner of any share or interest of or in any stock, annuity, or other public fund transferable at the Bank of England or the Bank of Ireland, or any owner of any share or interest of or in the capital stock of any body corporate, company, or society established by charter or by Act of Parliament, or any owner of any dividend or money payable in respect of such share or interest, if the offender by such personation transfers or endeavours to transfer any share or interest belonging to such owner, or by such personation receives or endeavours to receive any money due to any such owner, as if the offender were the true and lawful owner.

The punishment is penal servitude for life or for any term not not less than three years, or imprisonment for any term not exceeding two years with or without hard labour (*b*).

Personation of stock-holder.

1396. It is by statute (*c*) a felony falsely and deceitfully to personate any owner of any share or interest of or in any India stock, or in any stock as defined in the National Debt Act, 1870 (*d*), or any stock certificate or coupon issued in pursuance of the India Stock Certificate Act, 1863 (*e*), or of Part V. of the National Debt Act, 1870 (*f*), and thereby to obtain or endeavour to obtain any such stock certificate or coupon, or to receive or endeavour to receive any money due to any such owner, as if the offender were the true and lawful owner.

This offence is punishable in the same way as the last-mentioned felony (*g*).

(*s*) *I.e.*, if the offence may affect the public interest, as by false personation to defeat the administration of justice, or if there is a conspiracy, and see p. 689, *ante*; 2 East, P. C. 1010. Many of the cases of personation in the books are cases of conspiracy to defraud; see *R.* v. *Hevey* (1782), 2 East, P. C. 1010; *R.* v. *Robinson* (1746), 1 Leach, 37; *R.* v. *Mackarty* (1705), 2 Ld. Raym. 1179; 3 Ld. Raym. 325; see 2 East, P. C. 824; 2 Burr. 1129. The offence is triable at quarter sessions.

(*t*) As to personation at elections, see title ELECTIONS.

(*a*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 3; see Local Loans Act, 1875 (38 & 39 Vict. c. 83), s. 32; Colonial Stock Act, 1877 (40 & 41 Vict. c. 59), s. 21; Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102), s. 19; and see Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40.

(*b*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*c*) Forgery Act, 1870 (33 & 34 Vict. c. 58), s. 4; India Stock Certificate Act, 1863 (26 & 27 Vict. c. 73), s. 14.

(*d*) 33 & 34 Vict. c. 71; see s. 3, and First Schedule.

(*e*) 26 & 27 Vict. c. 73.

(*f*) 33 & 34 Vict. c. 71.

(*g*) Forgery Act, 1870 (33 & 34 Vict. c. 58), s. 4; India Stock Certificate Act, 1863 (26 & 27 Vict. c. 73), s. 14; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions

SECT. 2. Obtaining Property by Fraud.

1397. It is by statute (*h*) a felony to personate any owner of any share or interest in any company established under the Companies (Consolidation) Act, 1908 (*i*), or of any share, warrant, or coupon issued under that Act.

This offence is punishable in the same way as the last-mentioned felony (*k*).

Personation to obtain land etc.

1398. It is by statute (*l*) a felony falsely and deceitfully to personate any person, or the heir, executor, or administrator, wife, widow, next of kin, or relation of any person, with intent fraudulently to obtain any land, estate, chattel, money, valuable security, or property.

This offence is punishable in the same way as the last-mentioned felony (*m*).

Personation to obtain army pension etc.

1399. It is by statute (*n*) a felony for anyone wittingly and knowingly to personate or falsely assume the name or character, or procure any other so to personate or falsely assume the name or character, of any officer, non-commissioned officer, soldier, or other person entitled or supposed to be entitled to any pension, wages, pay, grant, or other allowance of money, prize money or relief, due or supposed to be due or payable, for or on account of any service done or supposed to be done by any such officer, non-commissioned officer, soldier, or other person in the King's army or other military service, or to personate or falsely assume the name or character of the executor or administrator, wife, relation, or creditor of any such officer etc., in order fraudulently to receive any such pension etc.

(*h*) 8 Edw. 7, c. 69, s. 38 (1) (ii.).

(*i*) *Ibid.*

(*k*) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 38 (ii.); Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*l*) False Personation Act, 1874 (37 & 38 Vict. c. 36), s. 1; nothing in the Act is to prevent a person from being proceeded against and punished under any other Act or at common law for an offence punishable as well under the Act as under any other Act or at common law. As to an offence under this Act in relation to any military pay etc., see Army Act, 1881 (44 & 45 Vict. c. 58), s. 142 (3).

(*m*) False Personation Act, 1874 (37 & 38 Vict. c. 36), s. 1; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*n*) Chelsea and Kilmainham Hospitals Act, 1826 (7 Geo. 4, c. 16), s. 38; there are almost identical provisions in the Army Prize Money Act, 1832 (2 & 3 Will. 4, c. 53), as to anyone personating etc. any officer etc. entitled etc. to any "prize money, grant, bounty money, share, or other allowance of money" due etc. for or on account of any service performed etc. by any officer etc. "who shall have really served or be supposed to have really served" in the King's army or "in any other military service," or as to personating or acting, aiding, or assisting in personating etc. "the executor, administrators, wife, widow, next of kin, relation or creditor" of any such officer etc., in order to receive or enable any other person to receive "any such prize money etc.; see also Army Act, 1881 (44 & 45 Vict. c. 58), s. 142 (2), (3). If A. believe B. to be C., and at B.'s request assumes the character of C. for the purpose of receiving a share of prize money etc., A. commits an offence under the Act (*R.* v. *Lake* (1869), 11 Cox, C. C. 333). The offence of personating someone for the purpose of obtaining payment of a part of a pension is committed even although the pension is no longer in existence (*R.* v. *Pringle* (1849), 9 C. & P. 408), but there must be a person who was in the service of the King etc. and whose name and character were assumed, and see p. 708, *post*.

SECT. 2. Obtaining Property by Fraud.

This offence is punishable in the same way as the last-mentioned felony (*o*).

Personation of naval pensioner etc.

1400. It is an indictable misdemeanour (*p*) falsely and deceitfully to personate any person entitled or supposed to be entitled to receive any pay, wages, allotment, prize money, bounty money, grant, or other allowance of the same nature, half-pay, pension, or allowance from the Compassionate Fund of the navy, payable or supposed to be payable by the Admiralty, or any other money so payable or supposed to be payable, or any effects or money in charge or supposed to be in charge of the Admiralty, in order to receive such pay etc.

The punishment for this offence in the case of conviction on indictment is penal servitude for not more than five or for not less than three years, or imprisonment for a term not exceeding two years with or without hard labour (*q*).

There are other cases of personation which are punishable only on summary conviction (*r*).

SUB-SECT 7.—*Conspiracy to Defraud.*

Conspiracy.

1401. If two or more persons conspire together to cheat or defraud another or others, the confederates commit an indictable common law misdemeanour; whether the act which they agree to do is or is not of itself criminal.

The punishment for this offence is fine and imprisonment with or without hard labour (*s*).

(*o*) Chelsea and Kilmainham Hospitals Act, 1826 (7 Geo. 4, c. 16), s. 38; Penal Servitude Act, 1857 (20 & 21 Vict. c. 3), s. 2; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*p*) Admiralty Powers etc. Act, 1865 (28 & 29 Vict. c. 124), s. 8; see Naval Pensions Act, 1884 (47 & 48 Vict. c. 44), s. 2. The offence is committed even though the person whose name or character is assumed is dead (*R.* v. *Martin* (1817), Russ. & Ry. 324; *R.* v. *Cramp* (1817), Russ. & Ry. 327). But the offence is not committed unless the person whose name or character is assumed was or was supposed to be entitled to the pay etc. which it is sought to obtain (*R.* v. *Brown*, *R.* v. *M'Annelly* (1800), 2 East, P. C. 1009). In *R.* v. *Tannet* (1818), Russ. & Ry. 351, a man was indicted for personating one Peter McCann, a person entitled to prize money on board of the ship *Tremendous;* a person named Peter McCarn was entitled to prize money in respect of services on that ship, but there was no person of the name of Peter McCann; the jury found that the prisoner meant to personate Peter McCarn, but the conviction was held by all the judges to be wrong; they were of opinion that the "personating" must apply to some person who had belonged to the ship, and that the indictment must charge the personating of that person. The principle of the decision is still, it seems, applicable, although the particular defect in the case could now be remedied by amending the indictment; see p. 344, *ante*. A person who aids and abets another in personating someone else is guilty of an offence under the statute (*R.* v. *Potts* (1818), Russ. & Ry. 353).

(*q*) Admiralty Powers etc. Act, 1865 (28 & 29 Vict. c. 124), s. 8; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is also punishable on summary conviction; see Admiralty Powers etc. Act, 1865 (28 & 29 Vict. c. 124). The offence is triable at quarter sessions.

(*r*) The offence is only triable at quarter sessions if the conspiracy is to commit a crime triable at quarter sessions (Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1).

(*s*) See Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 12; Army Act, 1881 (44 & 45 Vict. c. 58), s. 142.

Indictment.

An agreement made with a fraudulent mind to do that which, if done, would give to the prosecutor a right of action founded on fraud is a criminal conspiracy (*t*).

As the essence of the crime of conspiracy to defraud is the agreement of two or more persons to defraud someone else, it is unnecessary in an indictment for such a conspiracy to specify the particular means and devices by which the defendants conspired to defraud, or any overt act committed in justification of the agreement (*u*).

(*t*) *R.* v. *Aspinall* (1876), 2 Q. B. D. 48, C.A., *per* BRETT, J.A., at p. 59; *R.* v. *Hevey* (1782), 2 East, P. C. 856; *R.* v. *Warburton* (1870), L. R. 1 C. C. R. 274. Agreements to do the following things are instances of conspiracies to defraud:—To raise the price of the public funds on a particular day by false rumours (*R.* v. *De Berenger* (1814), 3 M. & S. 67); to procure by false statements a quotation of the shares of a company on the official list of the Stock Exchange in order to give a fictitious value to such shares (*R.* v. *Aspinall* (1876), 2 Q. B. D. 48, C. A.); to induce a false belief among investors that there is a *bonâ fide* market for certain shares (*Scott* v. *Brown, Doering, McNab & Co.*, [1892] 2 Q. B. 724, C. A.); to purchase shares in a company in order to induce persons to take shares in a new company which was to take over the business of an old company which the conspirators knew was hopelessly insolvent (*R.* v. *Gurney* (1869), 11 Cox, C. C. 414); to represent a bank and its affairs to be in a sound and prosperous condition when it is really insolvent (*R.* v. *Esdaile* (1858), 1 F. & F. 213); to make and publish a false balance-sheet misrepresenting the financial condition of a company (*R.* v. *Burch* (1865), 4 F. & F. 407); to fabricate false shares in a company in addition to the number prescribed by the rules and to sell them as good shares (*R.* v. *Mott* (1827), 2 C. & P. 521); to deprive a partner of his interest in some of the partnership property by false entries and false documents (*R.* v. *Warburton* (1870), L. R. 1 C. C. R. 274); to make false representations so as to enforce by means of legal process the payment of sums of money known not to be due (*R.* v. *Taylor* (1883), 15 Cox, C. C. 265, 268); to defraud an execution creditor of the fruits of a judgment by falsely ante-dating a deed relating to the property of the judgment debtor (*R.* v. *Cox* (1884), 14 Q. B. D. 153, C. C. R.); knowingly to make false representations as to the solvency of a purchaser of goods on credit and thus to enable the purchaser to get goods on credit when it is known that he does not intend to pay for them (*R.* v. *Orman* (1880), 14 Cox, C. C. 381); to cause indigent persons to be reputed and believed to be persons of considerable credit for the purpose of defrauding tradesmen (*R.* v. *Whitehouse* (1852), 6 Cox, C. C. 38; *R.* v. *Roberts* (1808), 1 Camp. 399); to dispose of goods in contemplation of bankruptcy in order to defraud the creditor of the person to whom the goods belong (*Heymann* v. *R.* (1873), L. R. 8 Q. B. 102; *R.* v. *Hall* (1858), 1 F. &. F. 33); to cause goods at an auction to be sold at a price far below their real value with intent to divide between the conspirators the difference between the auction price and the fair price (*Levi* v. *Levi* (1833), 6 C. & P. 239); to hold a sham auction with sham bidders for the purpose of selling goods at prices grossly above the real value (*R.* v. *Lewis* (1869), 11 Cox, C. C. 404, where *R.* v. *Levine* (1867), 10 Cox, C. C. 374, was commented upon and distinguished); to defraud a railway company by obtaining excursion tickets which were not transferable and selling them to other persons to be used by them (*R.* v. *Absolon* (1859), 1 F. & F. 498); to make false and fraudulent representations as to the soundness of a horse which the owners had agreed to sell and so to induce him to accept a less price than that at which he had agreed to sell the horse for (*R.* v. *Carlisle* (1854), Dears. C. C. 337); falsely and fraudulently to represent that a horse is the property of a private person and not of a horsedealer and thus to induce a person to buy it (*R.* v. *Kenrick* (1843), 5 Q. B. 49); to obtain money from another person by false pretences with intent to defraud (*R.* v. *Gill* (1818), 2 B. & Ald. 204).

(*u*) *R.* v. *Kinnersley* (1719), 1 Stra. 193; *R.* v. *Gill* (1818), 2 B. & Ald. 204; *R.* v. *Kenrick* (1843), 5 Q. B. 49; *Sydserff* v. *R.* (1847), 11 Q. B. 245, Ex. Ch. An indictment is sufficient which alleges that A. and B. "unlawfully conspired by false pretences and subtle means and devices to obtain from C. divers large sums of

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In conspiracy the unlawful agreement is of itself a sufficient overt act (*x*). But in a prosecution for conspiracy, unless there is direct proof of the unlawful agreement, the evidence must, in order to establish the agreement, show an overt act done in pursuance of the alleged agreement; evidence of such an act is always desirable, even when it is not necessary.

Evidence.

An overt act done by one of the conspirators in furtherance of the agreement will be evidence against all, if the agreement is established by other evidence (*y*).

SUB-SECT. 8.—*Prevention of Corruption Act*, 1906.

Corrupt transactions with agents.

1402. By statute (*a*) (1) if any agent corruptly accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gift or consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation thereto; or (2) if any person corruptly gives, or agrees to give, or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do any such act or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or (3) if any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, he commits a misdemeanour and is liable to imprisonment with or without hard labour for two years or to a fine not exceeding £500, or to both.

SECT. 3.—*Offences against the Bankruptcy Acts.*

Offence by bankrupt.

1403. A number of offences on the part of a bankrupt, or by a person against whom a receiving order has been made, have also been created by statute (*b*).

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money with intent to defraud," although if the indictment had been against one person it would have been necessary to set out the false pretences (*R.* v. *Gill*, *supra*; *R.* v. *Kenrick*, *supra*; see p. 694, *ante*. Merely to allege that A. and B. unlawfully fraudulently, and deceitfully did conspire, combine, confederate and agree together to cheat and defraud C. of his goods and chattels is sufficient (*Sydserff* v. *R.*, *supra*). But see *R.* v. *Richardson* (1834), 1 Mood. & R. 402; *R.* v. *Fowle* (1831), 4 C. & P. 592. It is, it seems, necessary to allege an intent to defraud someone, but an allegation of an intent to defraud the public is sufficient (*R.* v. *De Berenger* (1814), 3 M. & S. 67; *R.* v. *Gurney* (1869), 11 Cox, C. C. 414, at p. 440; but see *White* v. *R.* (1876), 13 Cox, C. C. 318); and 1 Russell on Crimes, 6th ed., 519 (n.).

(*x*) *Mulcahy* v. *R.* (1868), L. R. 3 H. L. 306.

(*y*) *R.* v. *Desmond* (1868), 11 Cox, C. C. 146.

(*a*) Prevention of Corruption Act, 1906 (6 Edw. 7, c. 34). These offences are not triable at quarter sessions (*ibid.*, s. 2 (5)). The consent of the Attorney or Solicitor General to the prosecution must be obtained (*ibid.*, s. 2 (1)).

(*b*) For a full treatment of these offences, see title BANKRUPTCY AND INSOLVENCY, Vol. II., pp. 345—351. As to obtaining credit by fraud, see *ibid.*, and *R.* v. *Muirhead* (1908), 73 J. P. 31, C. C. A. These offences are triable at quarter sessions.

SECT. 4.—*Forgery.*

SUB-SECT. 1.—*Forgery at Common Law.*

Definition of forgery.

1404. Forgery is the fraudulent making of a written instrument which purports to be that which it is not (*c*). It is indictable as a misdemeanour at common law, and the forgery of certain instruments and certain acts relating to or preparatory to forgery have been made statutory offences (*d*).

Forgery must be of some document or writing (*e*). The

(*c*) *Ex parte Windsor* (1865), 10 Cox, C. C. 118, at pp. 123, 124; *R.* v. *Ritson* (1869), L. R. 1 C. C. R. 200, at pp. 203, 204. For other definitions, see *R.* v. *Parkes* (1796), 2 Leach, 775, at p. 785; *R.* v. *Jones* (1785), 1 Leach, 366, 367; *R.* v. *Epps* (1864), 4 F. & F. 81, *per* WILLES, J., at p. 86; 2 East, P. C. 852; 4 Bl. Com. 245; 4 Com. Dig. tit. Forgery, A, 1; 1 Hawk. P. C., c. 70, s. 2 ("the notion of forgery doth not so much consist in the counterfeiting of a man's hand and seal . . . but in the endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as the solemn act of another which he is in no way privy to, or at least to make a man's own act appear to have been done at a time when it was not done and by force of such a falsity to give it an operation which in truth and justice it ought not to have"); Tomlin, Law Dictionary, tit. Forgery. Every fraudulent alteration of a true instrument is a forgery of the whole instrument (*R.* v. *Teague* (1802), 2 East, P. C. 979); so the forgery of a signature to a document may amount to the forgery of the entire document (*R.* v. *Autey* (1857), Dears. & B. 294). As to uttering a forged instrument, see p. 714, *post*.

(*d*) See p. 715, *post*. These statutes contain no definition of forgery; and in them forgery has the same meaning as forgery at common law (see *R.* v. *Ritson* (1869), L. R. 1 C. C. R. 200, at pp. 204, 205).

(*e*) It is not forgery fraudulently to insert the signature of a painter in a picture, even when the picture is not painted by him (*R.* v. *Closs* (1858), Dears. & B. 460, 466). Such an act is, however, made punishable in certain cases by the Fine Art Copyright Act, 1862 (25 & 26 Vict. c. 68), s. 7 (see title COPYRIGHT, Vol. VIII., p. 199). If a tradesman or manufacturer for the purpose of passing off his goods as those of another tradesman or manufacturer imitates the printed wrappers used by the other tradesman or manufacturer, and sells his goods in such wrappers, this is not forgery (*R.* v. *Smith* (1858), Dears. & B. 566). Such an offence is, however, punishable under the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), ss. 2, 5 (see title TRADE MARKS AND DESIGNS). It is forgery at common law to make a false certificate of character (*R.* v. *Toshack* (1849), 1 Den. 492; *R.* v. *Sharman* (1854), Dears. C. C. 285; *R.* v. *Moah* (1858), 7 Cox, C. C. 503, C. C. R.; but see *R.* v. *Hodgson* (1856), 7 Cox, C. C. 122, C. C. R.). There are also statutory provisions as to the giving or using of false characters; see Servants' Characters Act, 1792 (32 Geo. 3, c. 56), s. 4; Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 104; Seamen's and Soldiers' False Characters Act, 1906 (6 Edw. 7, c. 5), ss. 1, 2). It is forgery at common law fraudulently to fill up a county court summons or to alter a *distringas* into a summons (*R.* v. *Collier* (1831), 5 C. & P. 160); to put a seal to a document which is invalid without a seal (*R.* v. *Collins* (1844), 1 Cox, C. C. 57); to alter the entries made by donors on a list of subscriptions (*R.* v. *Hamilton*, [1901] 1 K. B. 740, C. C. R.); to forge a certificate of ordination or an entry in a register of ordinations (*R.* v. *Etheridge* (1901), 19 Cox, C. C. 676, 678, n.; and see *Slader* v. *Smallbrooke* (1664), 1 Lev. 138); to forge a railway pass (*R.* v. *Boult* (1848), 2 Car. & Kir. 604); or to forge an order from a magistrate to discharge a prisoner (*R.* v. *Harris* (1834), 1 Mood. C. C. 393; see *R.* v. *Fawcett* (1793), 2 East, P. C. 862); a bill of lading (*R.* v. *Stocker* (1695), 5 Mod. Rep. 137); an acquittance (*R.* v. *Ferrers* (1666), 1 Sid. 278); a receipt (*R.* v. *Ward* (1727), 2 Stra. 747); a warrant of attorney (*Farr's Case* (1663), T. Raym. 81); a marriage register (*Dudly's Case* (1658), 2 Sid. 71); a bill of exchange (*R.* v. *Sheldon* (1680), cited 2 Stra. 748); a promissory note (*R.* v. *Hales* (1728), 17 State Tr. 162); letters of credence to collect money (*Savage's Case* (1647), Sty. 12); a consent to act as next friend in a suit (*R.* v. *Smythies* (1849), 1 Den. 498). It is not forgery to make an entry in a

SECT. 4. Forgery.

instrument or some part of it must be false in some material respect (*f*).

book of accounts containing a false statement (*Ex parte Windsor* (1865), 10 Cox, C. C. 118, at p. 123; but see *Re Arton* (No. 2), [1896] 1 Q. B. 509, at p. 515). But this is a statutory offence in certain cases (see Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24), s. 1; Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 83). It is not forgery to fill in voting papers with the names and marks of voters who are marksmen (*R.* v. *Hartshorn* (1853), 6 Cox, C. C. 395; but see now *Blake* v. *Allen* (1600), Moore (K. B.), 619; *R.* v. *Combes* (1605), Moore (K. B.), 759; *R.* v. *Elsworth* (1780), 2 East, P. C. 986; *R.* v. *Kinder* (1800), 2 East, P. C. 855; *R.* v. *Atkinson* (1837), 7 C. & P. 669; *R.* v. *Treble* (1810), 2 Taunt. 328, Ex. Ch.; *R.* v. *Post* (1806), Russ. & Ry. 101).

(*f*) *R.* v. *Birkett* (1813), Russ. & Ry. 251; *R.* v. *Griffiths* (1858), Dears. & B. 548; *R.* v. *Hart* (1837), 1 Mood. C. C. 486; *Flower* v. *Shaw* (1848), 2 Car. & Kir. 703. It is forgery to make a deed fraudulently with a false date, when the date is material, although the deed is in fact made and executed by and between the persons by and between whom it purports to be made and executed (*R.* v. *Ritson* (1869), L. R. 1 C. C. R. 200; see *R.* v. *Lewis* (1754), Fost. 116). It is forgery to alter the name of a banker at whose bank a note is payable and substitute the name of another banker (*R.* v. *Treble* (1810), 2 Taunt. 328, Ex. Ch.). An instrument is a false instrument if it contains the signature of the defendant in his own name, if such signature is intended by the defendant to pass as that of another person, whether there be such another person in existence or not; so of an instrument signed by another person with the defendant's authority in such other person's real name, but with the intent that the signature should pass as that of a third person, whether existing or non-existing (*R.* v. *Parkes* (1796), 2 Leach, 775; and see 2 East, P. C. 957; *Mead* v. *Young* (1790), 4 Term Rep. 28; *R.* v. *Lewis* (1754), Fost. 116; *R.* v. *Hadfield* (1803), Evans, Collection of Statutes, Vol. VI., 93, Part V., ch. xii., p. 580; *R.* v. *Rogers* (1838), 8 C. & P. 629; *R.* v. *Mitchell* (1844), 1 Den. 282; *R.* v. *Blenkinsop* (1847), 2 Car. & Kir. 531; *R.* v. *Epps* (1864), 4 F. & F. 81; *R.* v. *Nisbett* (1853), 6 Cox, C. C. 320; *R.* v. *Mahony* (1854), 6 Cox, C. C. 487, C. C. R. (Ir.); but see *R.* v. *Webb* (1819), Russ. & Ry. 405). Thus to write the acceptance of an existing person or persons to a bill of exchange without authority or the name of a non-existing person or persons in acceptance of a bill is forgery; if a person writes an acceptance in his own name to represent a fictitious person or persons with intent to defraud, he commits forgery (*R.* v. *Rogers, supra;* and see *R.* v. *Wilks* (1767), 2 East, P. C. 957; *R.* v. *Bolland* (1772), 2 East, P. C. 958; *R.* v. *Lockett* (1772), 2 East, P. C. 940; *R.* v. *Taft* (1777), 2 East, P. C. 959; *R.* v. *Taylor* (1779), 2 East, P. C. 960; *R.* v. *Wardell* (1862), 3 F. & F. 82). But if a person gives a note or other written instrument as his own, his subscribing it by a fictitious name will not make it a forgery, if credit is wholly given to himself, without any regard to the name or any relation to a third person (*R.* v. *Martin* (1879), 5 Q. B. D. 34, C. C. R.; *R.* v. *Dunn* (1765), 1 Leach, 57; and see *R.* v. *Bontien* (1813), Russ. & Ry. 260); *aliter* if the fictitious name is assumed for the purpose of carrying out the particular fraud with which the defendant is charged (see *R.* v. *Sheppard* (1781), 1 Leach, 226; *R.* v. *Aickles* (1787), 2 East, P. C. 968; *R.* v. *Whiley* (1805), Russ. & Ry. 90; *R.* v. *Peacock* (1814), Russ. & Ry. 278; *R.* v. *Whyte* (1851), 5 Cox C. C. 290; *R.* v. *Francis* (1811), Russ. & Ry. 209; *R.* v. *Bontien* (1813), Russ. & Ry. 260). If D. represents himself to be E. and signs E.'s name and thereby obtains payment of money due to E. from F., who would not have paid the money unless he had believed that D. was E., D. is guilty of forgery (*R.* v. *Dunn, supra;* and see *R.* v. *Parke* (1843), 1 Cox, C. C. 4). It is not forgery for a person falsely to represent himself to be someone else who has actually signed an instrument (*R.* v. *Hevey* (1782), 2 East, P. C. 856). It is not forgery to procure a person's signature to a document, the contents of which have been altered without such person's knowledge (*R.* v. *Chadwick* (1844), 2 Mood. & R. 545; and see *R.* v. *Collins* (1843), 2 Mood. & R. 461, at p. 466). But it is forgery to make a false copy of a document for the purpose of using it as evidence of the contents of an original alleged to be lost (*Upfold* v. *Leit* (1801), 5 Esp. 103). If a blank cheque is given to a person with a limited authority to complete it and he inserts an amount different from that which he has authority to insert, or if he completes it when his authority has been determined, he is guilty of forgery

Resemblance to genuine document.

1405. To constitute the crime of forgery it is not essential that the forged instrument should be so made that, if it were in truth what it purports to be, it would be valid; but the false instrument must carry on the face of it the semblance of a valid instrument, and must not be obviously an illegal document (*g*).

It is not necessary that the resemblance to a genuine instrument should be exact; it is sufficient if the false instrument is so like as to be calculated to deceive persons who on ordinary observation, although persons having special experience as regards such instruments, would not be deceived (*h*).

Intent.

1406. An intent to defraud is a necessary ingredient of the crime of forgery (*i*). It is not necessary that anyone should be actually injured (*k*).

(*R.* v. *Bateman* (1845), 1 Cox, C. C. 186; *R.* v. *Wilson* (1847), 2 Car. & Kir. 527). If a person has a general authority to draw cheques, he cannot be convicted of forgery in drawing a cheque which he misappropriates (*R.* v. *Richardson* (1860), 2 F. & F. 343). If a person draws a cheque or accepts a bill of exchange or signs any other document in the name of another, it is forgery, unless the person drawing or accepting had authority from the other person or *bonâ fide* believed that he had authority (*R.* v. *Forbes* (1835), 7 C. & P. 224; *R.* v. *Beard* (1837), 8 C. & P. 143; *R.* v. *Parish* (1837), 8 C. & P. 94; *R.* v. *Beardsall* (1859), 1 F. & F. 529; see *R.* v. *Smith* (1862), 3 F. & F. 504; *R.* v. *Clifford* (1845), 2 Car. & Kir. 202; *R.* v. *Dixon* (1833), 2 Lew. C. C. 178. It is not forgery at common law for a person fraudulently to sign his own name to a bill *per procurationem* (*R.* v. *White* (1847), 1 Den. 208), but such an act is now punishable as a statutory offence, see pp. 720, 727, *post*.

(*g*) 2 East, P. C. 948; *R.* v. *Deakins* (1674), 1 Sid. 142; *R.* v. *Crooke* (1731), 2 East, P. C. 921; *R.* v. *Goate* (1700), 1 Ld. Raym. 737; *R.* v. *Murphy* (1753), 19 State Tr. 693; *R.* v. *Sterling* (1773), 2 East, P. C. 950; *R.* v. *Coogan* (1787), 1 Leach, 449; *R.* v. *Lyon* (1813), Russ. & Ry. 255; *R.* v. *Burke* (1822), Russ. & Ry. 496; *R.* v. *Pike* (1838), 2 Mood. C. C. 70; *R.* v. *Taylor* (1843), 1 Car. & Kir. 213; see *R.* v. *Butterwick* (1839), 2 Mood. & R. 196; *R.* v. *Cooke* (1838), 8 C. & P. 582; *R.* v. *Wicks* (1809), Russ. & Ry. 149. Forgery can be committed of an instrument on unstamped paper or paper insufficiently stamped, although payment of such an instrument could not be enforced by action (*R.* v. *Hawkeswood* (1783), 1 Leach, 257; *R.* v. *Lee* (1784), 1 Leach, 258, n. (a); *R.* v. *Morton* (1795), 1 Leach, 258, n. (b); *R.* v. *Reculist* (1795), 2 Leach, 703; *R.* v. *Teague* (1802), 2 East, P. C. 979; *R.* v. *Pike* (1838), 2 Mood. C. C. 70, at p. 75). If the false instrument is void on the face of it, the person who makes it, does not, it seems, commit forgery (*R.* v. *Wall* (1800), 2 East, P. C. 953; *R.* v. *Moffatt* (1787), 2 East, 954; *R.* v. *Jones* (1779), 1 Doug. (K. B.) 300; *R.* v. *Reading* (1793), 2 Leach, 590; *R.* v. *Pateman* (1821), Russ. & Ry. 455; *R.* v. *Bartlett* (1841), 2 Mood. & R. 362; *R.* v. *Moffatt* (1787), 1 Leach, 431; *R.* v. *Donnelly* (1835), 1 Mood. C. C. 438; but see *R.* v. *Reed* (1838), 2 Mood. C. C. 62, at p. 65, and compare *R.* v. *Harper* (1881), 7 Q. B. D. 78, C. C. R., and *R.* v. *Cartwright* (1806), Russ. & Ry. 106, 107, n. (b). It is no answer to a charge of forgery that the false instrument would, if genuine, be invalid by reason of some objection not appearing on the face of it (*R.* v. *M'Intosh* (1800), 2 East, P. C. 942; *R.* v. *Pike* (1838), 2 Mood. C. C. 70).

(*h*) 2 East, P. C. 858, 950; *R.* v. *Hoost* (1802), 2 East, P. C. 950; *R.* v. *Elliot* (1777), 1 Leach, 175; *R.* v. *Collicott* (1812), 2 Leach, 1048.

(*i*) 2 East, P. C. 853; see *R.* v. *Allday* (1837), 8 C. & P. 136; *R.* v. *Hartshorn* (1853), 6 Cox, C. C. 395; *R.* v. *Powner* (1872), 12 Cox, C. C. 235.

(*k*) *R.* v. *Ward* (1727), 2 East, P. C. 861, at p. 862. *Quære* whether there must be a possibility of some person being injured in consequence of the forgery (see *R.* v. *Marcus* (1846), 2 Car. & Kir. 356, *per* CRESSWELL, J., at p. 361; *R.* v. *Hoatson* (1847), 2 Car. & Kir. 777; *R.* v. *Ward*, *supra*; 2 Russell on Crimes, 6th ed., 600, n. (l); but see *R.* v. *Nash* (1852), 2 Den. 493, at p. 499). In *R.* v. *Holden* (1809), Russ. & Ry. 154, the prisoner, on the invitation of a person who was acting for the purpose of detecting forgeries, sold forged notes as forged and not as genuine

SECT. 4. **Forgery.**

1407. The offence of forgery is complete, if a false instrument is made with an intent to defraud; it is not necessary that the instrument should be uttered or published (*l*).

Uttering.

1408. It is a common law offence to utter any forged instrument the forgery of which is an offence at common law (*m*).

It is immaterial whether the attempt to defraud by the uttering is or is not effectual (*n*).

A false document is said to be uttered, when it is parted with or tendered or used in some way to get money or credit upon it or by means of it (*o*).

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and yet was found guilty, although owing to circumstances of which the defendant was not apprised the prosecutor could not be injured by the defendant's act. If the immediate effect of the forgery is to defraud the prosecutor, that is sufficient evidence of an intent to defraud (*R.* v. *Sheppard* (1810), Russ. & Ry. 169). If the forgery or uttering of a false document is part of a fraud, it is immaterial that, before the false document was given, the prosecutor had already parted with the money of which it is alleged that he was defrauded (*R.* v. *Martin* (1836), 1 Mood. C. C. 483; *R.* v. *Moody* (1862), Le. & Ca. 173; see *R.* v. *Boardman* (1838), 2 Mood. & R. 147). If a defendant pays in to his bank a forged note, it is for the jury to say whether he had an intent to defraud, even though he has given to the bank guarantees for an overdraft exceeding the amount of the note (*R.* v. *James* (1836), 7 C. & P. 553). To utter a bill of exchange all the names on which are fictitious is an offence, if the person to whom the bill is uttered did not know that the names were fictitious, and it is immaterial that the defendant intended to provide for the payment of the bill (*R.* v. *Hill* (1838), 2 Mood. C. C. 30). The offence is complete at the time of uttering, and it is immaterial that the bill is afterwards paid (*R.* v. *Geach* (1840), 9 C. & P. 499, where a defendant was convicted although the bill was paid before the institution of the prosecution). If a person utters a forged document knowing that it is forged, and means it to be taken as a genuine document, the inevitable conclusion is that he intended to defraud (*R.* v. *Cooke* (1838), 8 C. & P. 586; *R.* v. *Todd* (1844), 1 Cox, C. C. 57; see *R.* v. *Crowther* (1832), 5 C. & P. 316). If a person has reasonable ground for believing that he has authority to accept bills in the name of another person, and acting on that impression accepts a bill in that person's name, this is not forgery, but it is forgery if he does so without authority, or belief on reasonable ground that he has authority (*R.* v. *Forbes* (1835), 7 C & P. 224; *R.* v. *Parish* (1837), 8 C. & P. 94; *R.* v. *Beard* (1837), 8 C. & P. 143; *R.* v. *Beardsall* (1859), 1 F. & F. 529; and see *R.* v. *Smith* (1862), 3 F. & F. 504). It is not necessary in an indictment for forgery to allege an intent to defraud any particular person or on the trial of any such offence to prove an intent to defraud any particular person, but it is sufficient to allege and to prove that the defendant did the act charged with intent to defraud (Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 44, which is a re-enactment of the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 8). It seems that it is not essential to constitute forgery at common law that there should be an intent to defraud any particular person (see *R.* v. *Nash* (1852), 2 Den. 493, *per* MAULE, J., at p. 503; *Tatlock* v. *Harris* (1789), 3 Term Rep. 174, at pp. 176, 181; but see *R.* v. *Mazagora* (1815), Russ. & Ry. 291, and *R.* v. *Trenfield* (1858), 1 F. & F. 43. The cases of *R.* v. *Tuffs* (1848), 1 Den. 319 (decided before the passing of the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100)), and *R.* v. *Hodgson* (1856), Dears. & B. 3, cannot now be regarded as authorities to the contrary effect (see Greaves, Criminal Law Consolidation Acts, 2nd ed., 303).

(*l*) *R.* v. *Elliot* (1777), 1 Leach, 175; *R.* v. *Crocker* (1805), Russ. & Ry. 97, at p. 98.

(*m*) *R.* v. *Sharman* (1854), Dears. C. C. 285.

(*n*) *R.* v. *Sharman, supra* (disapproving on this point of *R.* v. *Boult* (1848), 2 Car. & Kir. 604). It is usual in indictments for forgery to add a count for uttering to the count for forging, but the practice formerly was to indict for forgery a person who uttered (see 2 East, P. C. 973; *R.* v. *Boult* (1848), 2 Car. & Kir. 604, 606, n.).

(*o*) *R.* v. *Ion* (1852), 21 L. J. (M. C.) 166, C. C. R., *per* Lord CAMPBELL, C.J., at

A person who delivers a forged document to an accomplice in order that the accomplice may utter it does not himself thereby utter such document (*p*). If a person delivers a forged document to an innocent agent in order that the agent may utter it, the person who delivers it is guilty of uttering (*q*). A conditional uttering of a forged instrument is equally an offence with any other kind of uttering (*r*).

Punishment.

The punishment for a common law forgery is fine or imprisonment without hard labour, or both fine and imprisonment (*s*).

SUB-SECT. 2.—*Forgery by Statute.*

Statutory forgeries.

1409. The Forgery Act, 1861 (*t*), and other statutes (*a*) have made various acts of forgery felonious and punishable with penal servitude, and have made other acts connected with or preliminary to forgery statutory offences.

(i.) *Bank Notes etc.*

Forging notes etc. of Bank of England etc.

1410. A person is by statute guilty of felony who with intent to defraud (1) forges or alters any note or bill of exchange of the Bank of England or of the Bank of Ireland, or of any other body corporate, company, or persons carrying on the business of bankers, commonly called a bank note or a bank bill of exchange or a bank post bill (*b*); (2) forges or alters any indorsement on or assignment of such bank note etc.; (3) offers, utters, disposes of, or puts off any forged or altered bank note etc. with knowledge that it is forged or altered, or any forged indorsement on or assignment of any such bank note etc. (*c*).

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p. 168. A person who produces for inspection a forged receipt, but refuses to part with it, utters a forgery, and it is immaterial that the forged receipt is exhibited not directly to gain credit upon it for the payment for which it purports to vouch, but to induce the belief that the person who exhibits it is a man of substance, and so to induce the person inspecting the receipt to lend money to a third person (*R.* v. *Radford* (1844), 1 Den. 59; *R.* v. *Ion*, *supra*; compare *R.* v. *Welch* (1851), 2 Den. 78). But the mere showing of an instrument the uttering of which would be criminal, or the act of handing such instrument to any person to be taken care of, though done to induce the belief that the owner is a man of substance, is not uttering, unless there is clear evidence of intent to get money or credit by means of the instrument (*R.* v. *Ion*, *supra*; see *R.* v. *Shukard* (1811), Russ. & Ry. 200).

(*p*) *R.* v. *Heywood* (1847), 2 Car. & Kir. 352; *R.* v. *Palmer* (1804), 1 Bos. & P. (N. R.) 96. Such an act would now be in some cases a statutory offence as a "disposing" or "putting away"; see note (*c*), *infra*.

(*q*) *R.* v. *Palmer*, *supra*; and see *R.* v. *Collicott* (1812), Russ. & Ry. 212.

(*r*) *R.* v. *Cooke* (1838), 8 C. & P. 582.

(*s*) If the forgery is successful and someone is defrauded, the offender might be indicted for a common law cheat, and might then be sentenced to imprisonment with hard labour (*R.* v. *Hamilton*, [1901] 1 K. B. 740, C. C. R.; Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29). But a person cannot be indicted for a common law cheat in respect of a forgery, unless it is successful (*R.* v. *Ward* (1727), 2 Stra. 747). Forgery is not triable at quarter sessions.

(*t*) 24 & 25 Vict. c. 98.

(*a*) See pp. 731 *et seq.*, *post*.

(*b*) See as to bank post bills and bank bills of exchange, *R.* v. *Birkett* (1813), Russ. & Ry. 251.

(*c*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 12. To discharge one indorsement

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The punishment for the offence is penal servitude for life or for any period not less than three years, or imprisonment for any term not exceeding two years with or without hard labour (*d*).

Possession of forged notes etc.

1411. A person is by statute (*e*) guilty of felony who without lawful authority or excuse purchases or receives from any other person or has in his custody or possession any forged bank note, bank bill of exchange, or a bank post bill or blank bank note, blank bank bill of exchange or blank bank post bill, with knowledge that it is forged. The onus of proving lawful authority and excuse is on the accused (*f*).

The punishment for this offence is penal servitude for any term not exceeding fourteen years and not less than three years, or imprisonment with or without hard labour for a term not exceeding two years (*e*).

Possession of instruments etc. for making forged notes.

1412. A person is by statute (*g*) guilty of felony:—

(1) Who without lawful authority or excuse makes, uses, or knowingly has in his custody or possession any frame, mould, or instrument for the making of paper with the words "Bank of England" or "Bank of Ireland" or any part of such word or words intended to resemble and pass for them, or for the making of paper with curved or waving bar lines, or with the laying wire lines thereof in a waving or curving shape, or with any number, sum, or amount expressed in a word or words in Roman letters visible in the substance of the paper, or with any device or distinction peculiar to and appearing in the substance of the paper used by these banks for any notes, bills of exchange, or bank post bills of such banks.

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and insert another, or to make an indorsement general instead of special, is to alter an indorsement (*R.* v. *Birkett* (1813), Russ. & Ry. 251). It is immaterial, if the alteration is such as to make the note as altered ungrammatical—*e.g.*, to alter one pound to ten pounds (*R.* v. *Post* (1806), Russ. & Ry. 101). It is not necessary to constitute a forged note that the resemblance to a true note should be exact (see p. 713, *ante*). A person who uses an accomplice to get rid of forged notes is guilty of "disposing and putting away" the note, but not of uttering (*R.* v. *Palmer* (1804), Russ. & Ry. 72). As to intent to defraud, see p. 713, *ante*.

(*d*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 12; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*e*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 13; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*f*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 13. As to the meaning of "lawful authority or excuse," see *R.* v. *Harvey* (1871), L. R. 1 C. C. R. 284; *Dickins* v. *Gill*, [1896] 2 Q. B. 310. Where the having any matter in the custody or possession of any person is in the Forgery Act, 1861 (24 & 25 Vict. c. 98), expressed to be an offence, if any person has such matter in his personal custody or possession, or knowingly and wilfully has it in the actual custody or possession of any other person, or in any dwelling-house or other building, lodging, apartment, field, or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether he has such matter for his own use or for the use or benefit of another, every such person is to be deemed to have such matter in his custody or possession within the meaning of the Act (Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 45); see *R.* v. *Rowley* (1806), Russ. & Ry. 110. If the original possession is innocent, as when a forged note is given to a person in the course of his business, and he afterwards finds out that it is forged, he does not commit any offence by retaining possession of the note (*Brooks* v. *Warwick* (1818), 2 Stark. 389).

(*g*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 14. The onus of proving lawful

(2) Who makes, uses, sells, exposes to sale, utters, or disposes of, or knowingly has in his custody or possession, any paper with such words or parts of such words as before mentioned visible in the substance of the paper, or any paper with the before-mentioned lines or numbers or device or distinction (*h*).

(3) Who by any art or contrivance causes such words or parts of such words or such device or distinction to appear visible in the substance of any paper, or causes the numerical sum or amount of any bank note or bank bill of exchange or bank post bill or blank bank note, or blank bank bill of exchange, or blank post bill in a word or words in Roman letters to appear visible in the substance of the paper whereon the same are written or printed (*i*).

Forgery of bank notes.

(4) Who engraves or makes upon any plate or upon any wood, stone, or other material, any promissory note, bill of exchange, or bank post bill, or part of such note or bill purporting to be a bank note or bank bill of exchange, or bank post bill or part of such note, or to be a blank bank note, blank promissory note, blank bank bill of exchange, or blank bank post bill of the governor and company of the Bank of England or of Ireland or of any other body corporate, company or person carrying on the business of bankers (*k*).

(5) Who engraves or makes as aforesaid any name, word or character resembling or apparently intended to resemble any subscription to any bill of exchange or promissory note issued by any of the before-mentioned banks (*l*).

(6) Who uses, or knowingly has in his custody or possession any such plate, wood, stone, or other material, or any such instrument or device for the making or printing of any such bank note or bill part thereof (*m*).

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authority is on the defendant (*ibid.*); nothing in this section is to prevent any person issuing any bill of exchange or promissory note having the amount expressed in guineas or in numerical figures denoting the amount in pounds sterling appearing visible in the substance of the paper, or from making, using, or selling any paper having waving or curved lines or any other devices in the nature of watermarks visible in the substance of the paper, not being bar lines or laying wire lines, provided they are not so contrived as to form the groundwork or texture of the paper, or to resemble the waving or curved laying wire lines or bar lines or the watermark of the paper used by the Banks of England and Ireland (Forgery Act, 1861 (24 & 25 Vict c. 98), s. 15).

(*h*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 14.

(*i*) *Ibid.*

(*k*) *Ibid.*, s. 16. Every part of what usually circulates as a note, the ornamental border as well as the obligatory words, is part of the note (*R.* v. *Keith* (1855), Dears. C. C. 486). Whether the engraving "purports" to be a bank note etc. is a question of fact to be ascertained by comparison with a genuine note, extrinsic evidence being admissible (*R.* v. *Keith*, *supra*). A document which does not purport on the face thereof to be a bank note cannot be made so to purport by reason of any statement made by the party disposing of it (*R.* v. *Jones* (1779), 1 Doug. (K. B.) 300; see also *R.* v. *Gibbs* (1800), 1 East, 173, at p. 180, n. The section applies to the notes of any bankers, wherever they carry on business (*R.* v. *Brackenridge* (1868), L. R. 1 C. C. R. 133. Banks carrying on business in Scotland are included in spite of s. 55, which provides that "nothing in this Act contained shall extend to Scotland." As to banks carrying on business in foreign countries, see *R.* v. *Auffret* (1898), 62 J. P. 521); *R.* v. *Hanmon* (1839), 9 C. & P. 11.

(*l*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 16.

(*m*) *Ibid.*

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(7) Who knowingly offers, utters, disposes of, or puts off, or has in his custody or possession, any paper on which is made or printed any blank bank note etc. of the Bank of England etc., or part of such bank note etc. or any name, word, or character resembling or apparently intended to resemble any such subscription to any such note etc. (*n*).

(8) Who engraves or makes upon any plate &c. any word, number, figure, device, character or ornament, the impression of which resembles or is apparently intended to resemble any part of a bank note etc. of the Bank of England etc. or any other body corporate, company, or person carrying on the business of bankers (*o*).

(9) Who uses, or knowingly has in his custody or possession any such plate, wood, stone, or other material, or any other instrument or device for impressing or making upon any paper or other material any word, number, figure, character, or ornament resembling or apparently intended to resemble any part of a bank note or bill of the Bank of England or Ireland or any other bank (*p*).

Forgery of bank notes.

(10) Who knowingly offers, utters etc. or has in his custody or possession any paper or other material bearing an impression of such matter as aforesaid (*q*).

(11) Who makes, uses, or knowingly has in his custody or possession any frame, mould, or instrument for making paper with the name of any firm of bankers other than the Banks of England and Ireland appearing visible in the substance of the paper (*r*).

(12) Who makes, uses, sells, exposes to sale, utters, or disposes of, or knowingly has in his custody or possession any paper with any such name appearing in the substance of the paper (*s*).

(13) Who by any art or contrivance causes any such name to appear visible in the substance of the paper upon which the same shall be written or printed (*t*).

(14) Who engraves or makes upon any wood, stone, or other material in any language, whether intended to be under seal or not, the whole or part of any bill of exchange, promissory note, undertaking, or order for payment of money purporting to be the bill, note, undertaking, or order or part thereof, of any foreign prince or state, or any minister or officer in the service of any such foreign prince etc., or of any body corporate or body of the like nature constituted or recognised by any foreign prince etc., or of any person or company of persons resident outside the King's dominions (*a*).

(*n*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 16.

(*o*) *Ibid.*, s. 17. A prisoner may be indicted under this section for having plates etc. for forging the note of a bank established in a foreign country (*R.* v. *Auffret* (1898), 62 J. P. 521); as to a bank carrying on the business of bankers, but incorporated for a totally different purpose, see *R.* v. *Catapodi* (1804), Russ. & Ry. 65; as to custody or possession, see p. 716, *ante*.

(*p*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 17.

(*q*) *Ibid.*

(*r*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 18

(*s*) *Ibid.*

(*t*) *Ibid.*

(*a*) *Ibid.*, s. 19. Formerly, where the forged bill was in a foreign language, it was necessary that the indictment should contain an English translation (*R.*

(15) Who uses or knowingly has in his custody or possession any plate etc. on which the whole or part of such foreign bill, note, undertaking, or order is engraved or made (*b*).

(16) Who knowingly utters or has custody or possession of any paper on which is made or printed any part of such foreign bill, note, undertaking, or order (*c*).

The punishment for any such offence is penal servitude for fourteen years, or for any term not less than three years, or imprisonment not exceeding two years with or without hard labour (*d*).

(ii.) *Orders for Payment of Money etc.*

Forging etc. orders etc. for payment of money etc.

1413. Everyone is by statute (*e*) guilty of felony who, with intent to defraud, forges, or alters, or utters, disposes of, or puts off with knowledge that it is forged or altered—(1) any undertaking, warrant, order, authority or request, for the payment of money (*f*), or for the delivery or transfer of any goods (*g*) or chattels, or of any note, bill, or other security for the payment of money, or for procuring or giving credit, or any indorsement on or assignment of any such undertaking, warrant, order, authority, or request; or (2) any accountable receipt, acquittance, or receipt for money or for goods, or for any note, bill, or other security for the payment of money, or any indorsement on or assignment of any such accountable receipt.

The punishment for such offence is penal servitude for life, or for any period not less than three years, or imprisonment for any term not exceeding two years with or without hard labour (*h*).

Fraudulent drawing etc. of bill of exchange etc

1414. Everyone is by statute (*i*) guilty of felony who without lawful authority or excuse, and with intent to defraud, draws, makes, signs, accepts, or indorses any bill of exchange or promissory note, undertaking, warrant, order, authority, or request for the payment of

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v. *Goldstein* (1822), Russ. & Ry. 473; and see *R.* v. *Harris* (1836), 7 C. & P. 429); but now it is not necessary to set out the forged instrument (Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 43). A photographic impression on glass is within the section (*R.* v. *Rinaldi* (1863), 9 L. T. 395, C. C. R.). Where prisoners are charged jointly with this offence it is not necessary in order to convict them that all should have been present when the order to engrave was given; all must have jointly employed the engraver, but it is sufficient if one first instructed the others and by his authority they employed the engraver. See *R.* v. *Mazeau* (1840), 9 C. & P. 676.

(*b*) Forgery Act, 1861 (24 & 25 Vict c. 98), s. 19; and see s. 43.

(*c*) *Ibid.*, s. 19.

(*d*) Forgery Act, 1861 (24 & 25 Vict. c. 98), ss. 14, 16, 17, 18, 19; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. These offences are not triable at quarter sessions.

(*e*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 23.

(*f*) The order or undertaking may be conditional, and therefore not within the definition of a negotiable instrument (*R.* v. *Anderson* (1843), 2 Mood. & R. 469, see p. 721, *post*; *R.* v. *Joyce* (1865), 10 Cox, C. C. 100).

(*g*) Even the smallest quantity, the maxim *De minimis non curat lex* having no application; so that an order to taste wine comes within the statute (*R.* v. *Illidge* (1849), 2 Car. & Kir. 871).

(*h*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 23; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. These offences are not triable at quarter sessions.

(*i*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 24.

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money or for the delivery or transfer of goods or chattels, or of any bill, note, or other security for money, by procuration or otherwise, for, in the name or on the account of, any other person, or who offers, utters, disposes of or puts off any such bill, note, undertaking, warrant, order, or request so drawn, made, signed, accepted or indorsed by procuration or otherwise, without lawful authority or excuse, with knowledge that it was so drawn etc.

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment not exceeding two years with or without hard labour (*k*).

Undertaking.

1415. An undertaking for the payment of money includes a conditional undertaking (*l*). The undertaking need not be for payment by the person who purports to give it; it may be a guarantee or undertaking that a third person shall pay on a contingency (*m*). It must, however, be an undertaking which, if genuine, would be binding in law (*n*).

Warrant.

1416. A warrant for the payment of money includes any instrument for payment under which, if genuine, the payer may recover the amount against the party signing it (*o*). The state of the account between the parties and the question whether the party signing it has at the time funds in the hands of the party to whom it is addressed are immaterial (*p*).

(*k*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 24; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*l*) *R.* v. *Reed* (1838), 2 Mood. C. C. 62; *R.* v. *Anderson* (1843), 2 Mood. & R. 469 (*e.g.*, a promise to pay a specified sum, or such other smaller sum as A. B. may incur by reason of a suretyship).

(*m*) *R.* v. *Stone* (1846), 2 Car. & Kir. 364. See *R.* v. *Joyce* (1865), 10 Cox, C. C. 100.

(*n*) That is, binding in law at the date of the forgery, though not necessarily so at the date of the Forgery Act, 1861 (24 & 25 Vict. c. 98). Thus where a guarantee was not binding at the date of the Forgery Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 66), but was subsequently made binding by the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97), s. 3, the forgery of such a guarantee became punishable on the passing of the later Act (*R.* v. *Coelho* (1861), 9 Cox, C. C. 8).

(*o*) *R.* v. *Vivian* (1844), 1 Car. & Kir. 719; *R.* v. *Ferguson* (1845), 1 Cox, C. C. 241; *R.* v. *Pilling* (1858), 1 F. & F. 324, and see *R.* v. *Dawson* (1851), 2 Den. C. C. 75. As to instruments which would be of no force, even if genuine, but upon which money is in fact paid, see *R.* v. *Rouse* (1849), 4 Cox, C. C. 7, and p. 721, *post*.

(*p*) *R.* v. *Vivian*, *supra*. It is not necessary that the name of a party who is in account with another should be forged; it is sufficient if the name of that party's agent or of a person saying in effect that he has that party's authority to require payment be forged (*ibid.*).

A document in the following form "to A. B. & Co. Pay to my order two months after date, to C. D. the sum of 80*l.* and deduct the same out of my account," being unsigned, but indorsed, and having the word accepted and the name of the acceptor written across the face, constitutes a warrant, because, if genuine, it would be a warrant from the acceptor to A. B. & Co. to pay the money (*R.* v. *Smith* (1845), 1 Car. & Kir. 700). So a document in the following form was held to be a warrant:—"Mr. L. London. Bought of D. . . . two bushels of apples 9*s*. November 9. Sir,—I hope you will excuse me sending for such a trifle, but . . . I am obliged to hunt after every shilling. D." (*R.* v. *Dawson* (1851), 2 Den. 75; see also *R.* v. *Harris* (1842), 1 Car. & Kir. 179). An ordinary cheque or bill of exchange is a warrant (p. 723, *post*), and a

A warrant need not be addressed to any particular person (*q*), and may be conditional (*r*), but a mere request to pay is not a warrant (*s*). A warrant or order for the payment of money must purport to be made by some person who might command the payment of the money and to be made upon a person who is bound to obey the command (*t*).

Authority and request.

A document in the form of a certificate or receipt may be shown by parol evidence to be treated in the course of a particular business as a warrant (*a*).

An indictment lies for forging a mere authority or request for the payment of money (*b*).

Forgery of void instrument

1417. If an instrument, had it been genuine, would have been effectual in the ordinary course of business between the parties as an order, no defect being patent on the face of it, such instrument may be the subject-matter of a forgery, although the instrument itself, if genuine, would have been void in law for want of compliance with some statutory direction governing the particular form of order (*c*).

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warrant includes a forged cheque drawn on a bank where the supposed drawer has a deposit account on which he is not entitled to draw cheques (p. 723, *post*; *R.* v. *Williams* (1846), 2 Car. & Kir. 51), but such cheque is not an "order." A post office money order is an order for the payment of money within the section (Post Office Act, 1908 (8 Edw. 7, c. 48), s. 59; see *R.* v. *Gilchrist* (1841), 2 Mood. C. C. 233).

(*q*) *R.* v. *Rogers* (1839), 9 C. & P. 41.

(*r*) *R.* v. *Anderson* (1843), 2 Mood. & R. 469.

(*s*) *R.* v. *Thorn* (1841), Car. & M. 206.

(*t*) *R.* v. *Clinch* (1791), 2 East, P. C. 938.

(*a*) *R.* v. *Kay* (1870), 11 Cox, C. C. 529, C. C. R. A certificate may be shown by certificate of character, although its production may entitle a person to the evidence to be treated as a warrant (*R.* v. *Rogers* (1839), 9 C. & P. 41); but a payment of money, is neither an undertaking nor a warrant nor an order for the payment of money (*R.* v. *Mitchell* (1860), 2 F. & F. 44).

(*b*) See Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 23. As to a pawnbroker's ticket, see *R.* v. *Morrison* (1859), 8 Cox, C. C. 194, C. C. R.

(*c*) *R.* v. *Mackintosh* (1800), 2 Leach, 883, where the order was an order by a seaman, which, if genuine, would have been void for want of attestation under stat. 32 Geo. 3, c. 34, s. 2; and see *R.* v. *Richards* (1811), Russ. & Ry. 193. See, too, *R.* v. *Jones* (1764), 1 Leach, 53, where to an indictment for forging an order for the redelivery of plate sent to Goldsmiths' Hall to be marked in the form "please to deliver my work to the bearer" it was held to be no defence that the order was irregular, because by the rule of the plate office the several species of work with the weight of the silver ought to have been mentioned in the order; *R.* v. *Pike* (1838), 2 Mood. C. C. 70, where to an indictment for forging one of the signatures to an order of a board of guardians of a poor law union it was held that it was no defence to show that the person who signed the order as presiding chairman was not in fact chairman on the day when he signed; *R.* v. *M'Connell* (1844), 1 Car. & Kir. 371, where the forged "pass" of a discharged prisoner whereby he was made to appear entitled to certain payments under stat. 5 Geo. 4, c. 85, was held to be a forged warrant and order for the payment of money, although the forged pass was not in statutory form or properly sealed; see, however, *R.* v. *Donnelly* (1835), 1 Mood. C. C. 438, where a similar document was held not to be a warrant or order, but in that case the document was ungrammatical and at variance with the form given in the Act, and therefore defective on the face of it; see also *R.* v. *Moffatt* (1787), 1 Leach, 431, where the defect of form was patent on the face of the instrument; *R.* v. *Vanderstein* (1865), 10 Cox, C. C. 177, C. C. R. (Ir.), where it was held that a forged post office order was an order for payment of money, though signed in an irregular manner, and though no letter of advice was ever

SECT. 4. **Forgery.**

Forging incomplete document.

An instrument which after making or alteration still remains incomplete (*d*) and has no resemblance to a genuine instrument cannot be an order.

An ineffectual addition to a document which already constitutes a complete order is not forgery, but where the document is so far incomplete that a signature is required as a condition of payment, as in the case where dividend warrants of a railway company require the shareholders' indorsement before the money can be paid, the false making of such signature is forgery of a warrant or order for payment of money (*e*).

Date of order.

1418. It is not necessary that the party to whom an order to pay is directed should be bound to pay at once, or, it appears (*f*), unconditionally. Thus, a post-dated cheque constitutes an order (*g*), as also does an order for payment on a certain date contingent upon a certain event (*h*).

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sent; *R.* v. *Rouse* (1849), 4 Cox, C. C. 7, where it was held that an indictment for forging a certificate purporting to relate to the death of the member of a lodge which had been dissolved could not be sustained, as at the time of the forgery there was no such lodge in existence. It is immaterial, however, whether the name forged be that of an actually existing or fictitious person (*R.* v. *Lockett* (1772), 1 Leach, 94; *R.* v. *Vanderstein*, (1865), 10 Cox, C. C. 177, C. C. R. (Ir.).

(*d*) *E.g.*, where an order is not under seal as required by a statute, and is addressed to the wrong person and is otherwise irregular (*R.* v. *Rushworth* (1816), Russ. & Ry. 317); *quære* whether such a document would not now be an "authority" or "request" within the meaning of s. 24 of the Forgery Act, 1861 (24 & 25 Vict. c. 96). *R.* v. *Rushworth*, *supra*, was decided under stat. 7 Geo. 2, c. 22, which did not contain those words. *R.* v. *Lee* (1848), 3 Cox, C. C. 80, where by the rules of a society all cheques upon the bankers of the society were required to be signed by four members and countersigned by the clerk, and the signatures of the four members were forged, and the signature of the clerk was afterwards obtained, it was held that although the instrument was not complete until the signature of the clerk had been obtained, yet as the clerk's signature was subsequently obtained, an indictment for forging a warrant for the payment of money was sustainable; if a signature is forged to an incomplete document which if complete would be an order for the payment of money, and the document is afterwards completed, then the document becomes an order, and the offence of forgery is complete.

(*e*) *R.* v. *Autey* (1857), 7 Cox, C. C. 329, C. C. R. This case was decided before the Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 23, which for the first time made the forgery of an indorsement a substantive offence. In such a case as *R.* v. *Autey*, *supra*, a person might now be indicted either for forging a warrant for the payment of money or for forging the indorsement on such a warrant.

(*f*) See, however, *R.* v. *Howie* (1869), 11 Cox, 320.

(*g*) *R.* v. *Taylor* (1843), 1 Car. & Kir. 213.

(*h*) *R.* v. *Lonsdale* (1847), 2 Cox, C. C. 222. It is not necessary to aver in the indictment the performance of the condition (*ibid.*). An order to pay A. B. or order a sum as advance money on an intended voyage, with a marginal note "on receiving the cheque I agree to sail in the ship *Mary Ann*, and to be on board within sixteen hours from the date of this cheque," has been held to be an order for payment of money (*R.* v. *Bamfield* (1834), 1 Mood. C. C. 416; see also *R.* v. *Anderson* (1843), 2 Mood. & R. 469); but a seaman's advance note containing a promise to pay ten days after the sailing of a ship a sum of money to any person advancing the same to A. B. "provided the said A. B. shall sail in the said ship" was held not to be a promissory note or order for the payment of money, because it was conditional (*R.* v. *Howie* (1869), 11 Cox, 320). In the case it was held, it seems, that the document was not a promissory note; *quære* whether, if the indictment had been for forging an order for the payment of money, it would have been good; see *R.* v. *Lonsdale*, *supra*.

Nature of warrant or order.

1419. An ordinary bill of exchange (*i*) or cheque (*k*), constitutes both a warrant and an order, a warrant authorising the banker to pay, and an order upon him to do so (*l*), and a cheque is none the less an order by reason that the banker has no assets in his hands of the party who appears to have signed it (*m*). A person, however, who has a deposit account on which he is not entitled to draw cheques cannot draw a cheque which constitutes an order, and even though such cheque be honoured, it is not an "order," though it is still a "warrant," and may be so described (*n*).

Order must purport to be genuine.

1420. An order for the delivery of goods or money must, in order to come within the statute, purport to be the order of the owner, or of some person who claims an interest in or a disposing power over such goods or money, so that the person to whom it is addressed is bound to obey it (*o*). It is not the less an order by reason that the person to whom it is addressed has no authority to obey it, until some form has been complied with (*p*).

Addressee.

1421. It is not necessary that the order should be addressed to anyone, if the evidence shows for whom it is intended (*q*). There must, however, in the case of an order for payment of money, be a payee, so that an instrument payable to blank or order is not an order for the payment of money (*r*).

Interpretation.

1422. In order to ascertain the nature of a given instrument both

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(*i*) *R.* v. *Shepherd* (1781), 2 East, P. C. 944; *R.* v. *Willoughby* (1783), 2 East, P. C. 944; see *R.* v. *Ravenscroft* (1809), Russ. & Ry. 161.

(*k*) *R.* v. *Crowther* (1832), 5 C. & P. 316.

(*l*) *R.* v. *Crowther*, *supra*, *per* BOSANQUET, J., at p. 317. It may therefore be described as a warrant and order for the payment of money.

(*m*) *R.* v. *Lockett* (1772), 1 Leach, 94; *R.* v. *Abrahams* (1774), 2 East, P. C. 941; *R.* v. *Crowther* (1832), 5 C. & P. 316; *R.* v. *Denny* (1845), 1 Cox, C. C. 178; *R.* v. *Carter* (1845), 1 Den. 65, *per* PARKE, B., at p. 67; *R.* v. *Dawson* (1851), 2 Den. 75, *per* CRESSWELL, J., at p. 77.

(*n*) *R.* v. *Williams* (1846), 2 Car. & Kir. 51.

(*o*) *Mitchell's* (*Mary*) *Case* (1754), Fost. 119, where the prosecution failed, because the alleged order was in substance a request. That case, which was decided under stat. (1734) 7 Geo. 2, c. 22, has been frequently cited and followed. *R.* v. *Ellor* (1784), 1 Leach, 323, and *R.* v. *Clinch* (1791), 1 Leach, 540, 544, decided under the same statute, are to the same effect. But the wording of the Forgery Act of 1861 (24 & 25 Vict. c. 98), s. 23, is different, and provides for the forgery of a mere request for the payment of money or the delivery of goods; see Greaves, Criminal Law Consolidation Acts, 2nd ed., 285; see *R.* v. *Newton* (1838), 2 Mood. C. C. 59, under the Forgery Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 66), which provided for forgery of a request for the delivery of goods or for the delivery of a security for the payment of money.

(*p*) *R.* v. *Illidge* (1849), 2 Car. & Kir. 871.

(*q*) *R.* v. *Gilchrist* (1841), Car. & M. 224; *R.* v. *Snelling* (1853), 6 Cox, C. C. 230. The authorities to the contrary effect (*R.* v. *Clinch* (1791), 1 Leach, 540; *R.* v. *Denny* (1845), 1 Cox, C. C. 178; *R.* v. *Ravenscroft* (1809), Russ. & Ry. 161) must be deemed to be overruled or inapplicable. In this respect there is no distinction between an order and a request, evidence being admissible in both cases to show to whom the instrument is addressed (*R.* v. *Snelling*, *supra*, *per* WILLIAMS, J., at p. 235; *R.* v. *Cullen* (1831), 1 Mood. C. C. 300; *R.* v. *Carney* (1832), 1 Mood. C. C. 351; *R.* v. *Pulbrook* (1839), 9 C. & P. 37.

(*r*) *R.* v. *Richards* (1811), Russ. & Ry. 193.

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the form and substance must be regarded (*s*). Words which are ambiguous in themselves and are not shown to be used in a special sense will not be held to constitute an order, request, or warrant (*t*); but evidence is admissible to show that an instrument, though in the form of a request, is treated in the ordinary course of business as an order (*a*), or, though in the form of a certificate (*b*) or receipt (*c*), is treated as a warrant, authority or request (*d*). To constitute a "request" for delivery of goods or money it is not necessary that the person whose writing is forged should have any authority over or interest in the goods or money sought to be obtained (*e*).

As in the case of an order, it is not necessary that such request should be addressed to the person whom the indictment alleges that it was intended to defraud (*f*), or even that it should be addressed to any person whatever (*g*).

Security for money.

1423. A security for payment of money must be one which, if genuine, would be binding at law. A person who, in consideration of a creditor forbearing to sue, gives an I.O.U. signed by himself, and also forges the name of another person thereto, is guilty of forging a security (*h*).

(*s*) The difference between an order and a request is that a request purports to be made without authority to command, an order with authority (*R.* v. *Snelling* (1853), 6 Cox, C. C. 230, C. C. R., *per* JERVIS, C.J., at p. 233). See also *R.* v. *Thorn* (1841), 2 Mood. C. C. 210; *R.* v. *Dawson* (1851), 2 Den. 75. As to the indorsement of a letter of credit, see *R.* v. *Wilton* (1858), 1 F. & F. 391; as to an instrument in the form of a bill of exchange, but without an acceptance, see *R.* v. *Curry* (1841), 2 Mood. C. C. 218. In *R.* v. *Egan* (1843), 1 Cox, C. C. 29, it was held that a document in the following words, "I hereby authorise my servant man A. B. to procure a watch of you" was not an order or request; but such a document would be an "authority," which word was probably inserted to meet that case in the Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 23.

(*t*) Such words as "per bearer," followed by a description of goods and a signature (*R.* v. *Cullen* (1831), 1 Mood. C. C. 300), or "W. Trim, 2*s.*" (*R.* v. *Ellis* (1850), 4 Cox, C. C. 258) do not amount to an order or request for the delivery of goods. But see *R.* v. *Pulbrook* (1839), 9 C. & P. 37.

(*a*) *E.g.*, foreign letters requesting a correspondent of the writer in England to advance money (*R.* v. *Raake* (1838), 2 Mood. C. C. 66); a document in these words, "Mr. J. Please to pay A. B. the sum of £13, by order of C. D. . . . your obliged C. D." (*R.* v. *Carter* (1844), 1 Car. & Kir. 741); see *R.* v. *Denny* (1845), 1 Cox, C. C. 178, and *R.* v. *Turberville* (1849), 4 Cox, C. C. 13; *R.* v. *Snelling* (1853), 6 Cox, C. C. 230, C. C. R., *per* JERVIS, C.J., at p. 233.

(*b*) *R.* v. *Rogers* (1839), 9 C. & P. 41.

(*c*) *R.* v. *Kay* (1870), 11 Cox, C. C. 529, C. C. R., where it was proved that by the custom of a building society such instruments were so treated.

(*d*) *R.* v. *Walters* (1842), Car. & M. 588; see *R.* v. *Hunter* (1794), 2 Leach, 624; *R.* v. *Rouse* (1849), 4 Cox, C. C. 7; *R.* v. *Turberville* (1849), 4 Cox, C. C. 13; *R.* v. *Snelling* (1855), 6 Cox, C. C. 230, and cases there cited; but see *R.* v. *Ellis* (1850), 4 Cox, C. C. 258.

(*e*) *R.* v. *Thomas* (1837), 2 Mood. C. C. 16; *R.* v. *James* (1838), 8 C. & P. 292; and see *R.* v. *Evans* (1833), 5 C. & P. 553.

(*f*) *R.* v. *Carter* (1834), 7 C. & P. 134.

(*g*) *R.* v. *Carney* (1832), 1 Mood. C. C. 351; *R.* v. *Cullen* (1831), 1 Mood. C. C. 300; *R.* v. *Pulbrook* (1839), 9 C. & P. 37.

(*h*) *R.* v. *Chambers* (1871), 12 Cox, C. C. 109, C. C. R.

1424. A receipt or acquittance is to be distinguished from an authority to pay (*i*). A mere recital or memorandum of a payment not purporting to be signed or acknowledged by the pretended payee is not a receipt, though properly stamped and uttered as a receipt (*k*). But if an instrument purporting to be an agreement contains a recital of indebtedness followed by a release upon the payment of certain money and the words "the receipt of which money is hereby acknowledged," these words constitute a receipt (*l*).

It is not necessary that the words "receipt" or "received" should appear at all. An instrument which represents that a person has received goods for which he holds himself accountable to another is an accountable receipt, although the word "received" does not appear on it (*m*).

An instrument, the possession of which entitles a person to receive a delivery note, which delivery note enables him in the course of a business to obtain possession of the goods described

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(*i*) *R.* v. *Parker* (1847), 2 Cox, C. C. 274; also reported as *R.* v. *Cooper* (1847) 2 Car. & Kir. 586, where the treasurer of a county in paying the expenses of a prosecution was accustomed to pay the whole amount to the attorney for the prosecution, but before making payment he required the signature of every person named in the order for payment to be written on the back of the order, and it was held that such signature was not a receipt, but only an authority from the person signing to the treasurer to pay the person producing the order. This case is now provided for by the addition of the word "authority" to the Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 23; stat. 7 Geo. 4 & 1 Will. 4, c. 66, s. 10, under which *R.* v. *Parker*, *supra*, was decided, did not have the word "authority." See *R.* v. *Rice* (1834), 6 C. & P. 634, where a receipt signed by the captain of a detachment, on the authority of which money was received from an army agent, was held to be a receipt, although it was proved that such receipts were frequently cashed by tradesmen who afterwards received the money from the army agents; and see *R.* v. *Hope* (1834), 1 Mood. C. C. 414, where it was held that a paymaster's receipt for soldiers' subsistence money which was cashed and ultimately paid to bearer by the agent of the regiment was properly described as a receipt, and not an order for payment of money.

(*k*) *R.* v. *Harvey* (1812), Russ. & Ry. 227. A signature is not necessary, however, to complete the forgery of a receipt (*R.* v. *Inder* (1848), 2 Car. & Kir. 635). A scrip certificate of a railway company, although it referred to the payment of a sum of money by the holder and acknowledged the right of the holder to interest and to a share in the company, was held not to be a receipt or acquittance or an undertaking for the payment of money (*R.* v. *West* (1847), 1 Den. 258; *Clark* v. *Newsam* (1847), 1 Exch. 131).

(*l*) *R.* v. *Hill* (1847), 2 Cox, C. C. 246; see *R.* v. *Vaughan* (1838), 8 C. & P. 276.

(*m*) *R.* v. *Pries* (1853), 6 Cox, C. C. 165, where the document read, "By order of A. B. we have this day transferred into the name of C. D. 759 quarters wheat *ex* E. F. Entered by A. B. and now lying at our granaries G. H." A pawnbroker's ticket is an accountable receipt for goods (*R.* v. *Fitchie* (1857), 7 Cox, C. C. 257, C. C. R., *per* CROMPTON, J., at p. 260). A turnpike ticket is a receipt for money (*R.* v. *Fitch* (1862), 9 Cox, C. C. 160, C. C. R.). An ordinary railway ticket is not an acquittance or receipt for money (*R.* v. *Gooden* (1871), 11 Cox, C. C. 672). A document called a "clearance," certifying that a member of a friendly society has paid all dues and demands, is not an acquittance or receipt (*R.* v. *French* (1870), 11 Cox, C. C. 472, C. C. R.). If a person writes under a tradesman's bill the word "paid" and the name of the tradesman, this purports to be a receipt for money (*R.* v. *Houseman* (1837), 8 C. & P. 180). See *R.* v. *Martin* (1836), 7 C. & P. 549, overruling *R.* v. *Thompson* (1801), 2 Leach, 910). As to proving that a document which does not purport to be a receipt is a receipt, see *R.* v. *Hunter* (1794), 2 Leach, 624; *R.* v. *Rogers* (1839), 9 C. & P. 14.

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therein, is a receipt (*n*). An entry in a banker's pass-book is an accountable receipt for the payment of money (*o*).

The receipt need not be for money which the person defrauded held in his individual right; it may be for money which he held in right of others (*p*).

It is not necessary that the forgery should be in the body of the receipt (*q*). The document must, however, be complete; and therefore a "scrip receipt" not filled up with the name of the subscriber is not a receipt (*r*).

Forgery may be committed in respect of a copy of a receipt if the party making the false copy relies upon it as evidence upon the supposed loss of the original (*s*).

Where part payment has been received by an agent for his principal and duly accounted for, and after the termination of the agency, the former agent collects the balance of the debt under false pretences and alters the receipt previously given, such alteration of a "spent" receipt is not forgery of a receipt (*t*).

(*n*) *R.* v. *Meigh* (1857), 7 Cox, C. C. 401.

(*o*) *R.* v. *Harrison* (1777), 1 Leach, 180; and see *R.* v. *Smith* (1862), 9 Cox, C. C. 162, C. C. R., where a prisoner, who was both treasurer and member of an unenrolled friendly society, made fictitious entries in a book purporting to be a bank pass-book (such entries purporting to vouch that he had paid certain moneys into the bank, and that the bank had acknowledged the receipt of them, whereas the entries were false and fraudulent), and it was held that the prisoner, although a member of the society and interested in the moneys, might be convicted of forgery of a receipt; and see *R.* v. *Atkinson* (1841), 2 Mood. C. C. 215, where bankers being accustomed to give receipts on deposit of money in the following form: "Received of A. B. £85 to his credit. This receipt not transferable," and on the return of the receipt with A. B.'s signature to repay the money with interest, it was held that forgery of A. B.'s signature constituted forgery of an "acquittance" for £85 and interest.

(*p*) *E.g.*, on behalf of a charitable institution (*R.* v. *Jones* (1785), 1 Leach, 366).

(*q*) Thus where the body of an accountable receipt acknowledged four pounds, and the prisoner altered the figure 4 in the corner of the receipt to 40, and in passing the instrument stated that the word four in the body had been written by mistake, it was held that the prisoner had committed forgery (*R.* v. *Johnston* (1851), 5 Cox, C. C. 133, C. C. R. (Ir.)).

(*r*) *R.* v. *Lyon* (1793), 2 Leach, 597. Such a case is to be distinguished from an entry in a banker's pass-book, where the entry purports to be in a book containing receipts from customers, and therefore shows that the money was received from the person to whom the book belonged.

(*s*) *Upfold* v. *Leit* (1803), 5 Esp. 101.

(*t*) *R.* v. *Sargent* (1865), 10 Cox, C. C. 161. The offence here committed is that of obtaining money by false pretences. It is not forgery of a receipt for a person to sign a receipt in his own name for someone else, *e.g.*, "Received for R. Aichman, G. Arscott" (*R.* v. *Arscott* (1834), 6 C. & P. 408), and such receipt is apparently not within s. 24 of the Forgery Act, 1861 (24 & 25 Vict. c. 98). If words are added which do not alter the original character of the receipt, this of itself does not amount to forgery of a receipt (*R.* v. *Milton* (1866), 10 Cox, C. C. 364). In a case where a station-master, whose duty it was to pay B. both for collection and delivery of parcels, set down items of collection and delivery in parallel columns, but paid for collection only, and obtained a receipt at the bottom of the collection column, under which he secretly put a stamp and wrote across it the amount appearing due on both columns, it was found by the jury that the document to which this addition was made bore a different meaning afterwards from that which it bore before, and it was held that the prisoner was rightly convicted of forging a receipt (*R.* v. *Griffiths* (1858), 7 Cox, C. C. 501, C. C. R.).

(iii.) *Bills of Exchange etc.*

SECT. 4.

Forgery.

Forging bill of exchange etc.

1425. Everyone is guilty of felony who, with intent to defraud (*a*), (1) forges or alters any bill of exchange (*b*) or any acceptance, indorsement, or assignment thereof, or any promissory note (*c*) or indorsement or assignment thereof, or knowingly offers, utters etc. any such bill etc. with knowledge that it is forged (*d*); (2) obliterates, adds to, or alters the crossing on any cheque or draft on a banker (*e*); (3) offers, utters etc. (*f*) any such cheque or draft with any such obliteration, addition or alteration of words with knowledge that such obliteration etc. has been made (*g*).

The punishment for such offence is penal servitude for life, or for any period not less than three years, or imprisonment for not more than two years, with or without hard labour (*h*).

Drawing bill etc. by procuration.

1426. Everyone is by statute guilty of felony who without lawful authority or excuse (*i*) and with intent to defraud draws, makes, signs, accepts, or indorses any bill of exchange or promissory note by procuration or otherwise on behalf of any other person, or offers, utters, disposes of or puts off any such bill or note, so drawn etc. with knowledge that it was so drawn etc.

The punishment for such offence is penal servitude for not more than fourteen nor less than three years, or imprisonment not exceeding two years, with or without hard labour (*k*).

Cheques.

1427. The expression "a bill of exchange" includes a cheque (*l*). A document which by reason of the transposition of words departs

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(*a*) As to intent to defraud, see *R.* v. *Wilson* (1847), 2 Car. & Kir. 527; *Flower* v. *Shaw* (1848), 2 Car. & Kir. 703; *R.* v. *Bontien* (1813), Russ. & Ry. 260, and p. 713, *ante*.

(*b*) *R.* v. *Birkett* (1813), Russ. & Ry. 251; *R.* v. *Chisholm* (1815), Russ. & Ry. 297. The words "any bill of exchange" have been held to cover foreign as well as inland bills (*R.* v. *Roberts* (1857), 7 Cox, C. C. 422, C. C. R. (Ir.)).

(*c*) A conditional agreement to pay is not a promissory note (Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 83 (1)). See *R.* v. *Howie* (1869), 11 Cox, C. C. 320; as to an instrument alleged to be a promissory note, but really a nullity, see *R. Burke* (1822), Russ. & Ry. 496.

(*d*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 22. As to definition of bill of exchange and promissory note, see Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), ss. 3 (1), 83 (1), and title BILLS OF EXCHANGE, Vol. II., p. 462.

(*e*) The term "cheque or draft on a banker" includes any coupon bearing across its face an addition in written, printed, or stamped letters of the name of any banker, or of the words "and company" in full or abbreviated between two transverse lines (The Local Loans Act, 1875 (38 & 39 Vict. c. 83), s. 32), and on any document issued by a customer of any banker intended to enable any person or body corporate to obtain payment from such banker of the sum mentioned in such document (Revenue Act, 1883 (46 & 47 Vict. c. 55), s. 17).

(*f*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 25.

(*g*) *Ibid.*

(*h*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*i*) This section does not, like many others, provide that the proof of lawful authority or excuse shall lie on the party accused.

(*k*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 24; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*l*) Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 73, where a cheque is defined as a bill of exchange drawn on a banker, payable on demand.

SECT. 4. Forgery.

from the ordinary form of a cheque may still be a cheque for the forgery of which an indictment will lie (*m*). Forgery may be committed in respect of a post-dated cheque (*n*).

Altering amount of bill of exchange.

1428. The alteration of a bill of exchange from a lower to a higher sum constitutes forgery as well as "altering"; therefore a prisoner who has committed such offence may be convicted without any specific charge of altering in the indictment (*o*). Alteration of the date of payment, or even the slightest insertion, alteration, or erasure in any material part of a true instrument so as to give it a new operation constitutes forgery (*p*).

It is not necessary that the bill or note as altered should be grammatical (*q*) or negotiable (*r*), or that the signature should be a *fac simile* of that of the person whose signature it purports to be (*s*).

There can be no forging or uttering of a bill of exchange or note, if it is incomplete as forged (*t*).

(*m*) The test appears to be whether the drawer would be obliged to pay, if the bank refused. Thus "pay Mr. C. seventeen or bearer pounds, eleven shillings," dated, signed and addressed as a cheque, was held to constitute a cheque capable of being the subject of forgery (*R.* v. *Boreham* (1847), 2 Cox, C. C. 189).

(*n*) See Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 13 (2). In *R.* v. *Taylor* (1843), 1 Car. & Kir. 213, which was the case of a post-dated cheque, the indictment was for forgery of an order for the payment of money. An indictment for the forgery of a cheque would in such a case now, it seems, be good. As to forgery of an unnecessary indorsement for the sake of obtaining credit and getting a cheque cashed, see *R.* v. *Wardell* (1862), 3 F. & F. 82.

(*o*) *R.* v. *Teague* (1802), Russ. & Ry. 33.

(*p*) *R.* v. *Atkinson* (1837), 7 C. & P. 669, *per* PARK, J., at p. 671; *R.* v. *Treble* (1810), 2 Taunt. 328, Ex. Ch. (alteration of place of payment); and see *Desbrow* v. *Weatherley* (1834), 6 C. & P. 758 (insertion of place of payment). But where a customer of a bank on receiving back a paid cheque altered the handwriting and returned it, declaring it to have been a forgery, not for the purpose of giving a new operation to the cheque, but in order to support a false charge of forgery, and in order to obtain money by a false pretence, it was held that such alteration was not forgery (*Brittain* v. *Bank of London* (1863), 3 F. & F. 465). Such an act would be indictable as an attempt to obtain money by false pretences; see p. 692, *ante*.

(*q*) *R.* v. *Post* (1806), Russ. & Ry. 101 (a banker's one pound note changed to ten pound, pound being left in the singular).

(*r*) *R.* v. *Box* (1815), Russ. & Ry. 300; *R.* v. *Winterbottom* (1844), 2 Car. & Kir. 37 (a bill payable to the order of four persons indorsed with the forged signature of one of them).

(*s*) *R.* v. *Mahony* (1854), 6 Cox, C. C. 487, C. C. R. (Ir.) (where a prisoner induced his wife, whose maiden name was Ann Watters, to sign two notes A. Watters, and handed them to the prosecutor as being the notes of his mother-in-law Catherine Watters, it was held that the variation of signature, not being sufficient to put a party on inquiry, did not prevent the prisoner from being guilty of forging and uttering); see also *R.* v. *Parke* (1843), 1 Cox, C. C. 4, and compare *R.* v. *Fitzgerald* (1741), 1 Leach, 20 (a conviction for forging a will of Peter Perry under the name of John Perry).

(*t*) *E.g.*, if there is no signature to a promissory note (*R.* v. *Pateman* (1821), Russ. & Ry. 455, or no drawer's name to a bill of exchange (*R.* v. *Harper* (1881), 7 Q. B. D. 78, C. C. R.); *R.* v. *Butterwick* (1839), 2 Mood. & R. 196; *R.* v. *Mopsey* (1868), 11 Cox, 143); see Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 3, or no payee's names (*R.* v. *Randall* (1811), Russ. & Ry. 195; *R.* v. *Richards* (1811), Russ. & Ry. 193). It seems that one who writes another person's name across a blank stamp cannot be convicted of forgery, though the stamped document be

1429. To sign a bill or indorsement in an assumed name with intent to defraud is forgery, and it is immaterial that the bill would have been equally taken if the person charged had indorsed his own name (*a*).

Use of assumed name.

Where a person has assumed a false name for the purpose of committing a fraud by drawing, accepting, or indorsing bills in that name, and subsequently signs bills in that name, he commits forgery, and the onus is upon him of proving that he assumed the false name on other occasions and for other purposes (*b*). But if a person has assumed the name for other fraudulent purposes and signs the assumed name to a false instrument, he is not guilty of forgery, unless when he assumed the fictitious name he contemplated the making of the false instrument (*c*).

Fictitious or non-existing person.

An acceptance, drawing, or indorsement written or procured to be written in the name of a fictitious or non-existing person is a forgery (*d*), and as in the case of an assumed name it is immaterial

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afterwards filled up by a confederate (*R.* v. *Cooke* (1838) 8 C. & P. 582). But if the person who forges the name, utters the instrument after it has been filled up, he could be convicted of the offence of uttering (*ibid.*). So if a cheque which requires the signature of more than one person is altered, while it only has the signature of one, the person who made the alteration cannot be convicted of forging the cheque (*R.* v. *Turpin* (1849) 2 Car. & Kir. 820). There cannot be a conviction for forgery of a bill, if on the face of it is void (*R.* v. *Moffatt* 81787), 1 Leach, 431); but there may be a conviction for forgery, if the bill is void for reasons not appearing on the face of it (*R.* v. *Mackintosh* (1800), 2 Leach, (83). A person who forges a document in the form of a bill of exchange, but requiring the drawee to pay to his own order, accepted by the drawee and ndorsed by the drawer, cannot be convicted of forging a bill of exchange (*R.* v. *Bartlett* (1841), 2 Mood. & R. 362). See now Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61, s. 5), and *Fielder* v. *Marshall* (1861), 9 C. B. (N. S.) 606; *Peto* v. *Reynolds* (1854), 9 Exch. 410; *Edis* v. *Bury* (1827), 6 B. & C. 433. As to forgery of a document in the form of a promissory note, made payable to a number of unspecified persons associated under a general name and not constituting a firm or corporation, see *R.* v. *Clarkson* (1844), 1 Cox, C. C. 110; but see the definition of promissory note in the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 83. As to a bill of exchange without a drawee, see *R.* v. *Hawkes* (1838), 2 Mood. C. C. 60; *R.* v. *Smith* (1843), 2 Mood. C. C. 295; *Gray* v. *Milner* (1819), 8 Taunt. 739; *R.* v. *Hunter* (1823), Russ. & Ry. 511; *R.* v. *Curry* (1841), 2 Mood. C. C. 218; but see now Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 3. A document in the form of a bill in which the words "(without acceptance)" are added is none the less a bill of exchange (*R.* v. *Kinnear* (1838), 2 Mood. & R. 117). A person may be convicted of forgery of a document which by law should be stamped, although it is unstamped or insufficiently stamped (*R.* v. *Reculist* (1796), 2 Leach, 703; *R.* v. *Hawkeswood* (1783), 1 Leach, 257; *R.* v. *Morton* (1795), 2 East, P. C. 955).

(*a*) *R.* v. *Marshall* (1804), Russ. & Ry. 75; *R.* v. *Francis* (1811), Russ. & Ry. 209; *R.* v. *Whiley* (1805), Russ. & Ry. 90.

(*b*) *R.* v. *Peacock* (1814), Russ. & Ry. 278.

(*c*) *R.* v. *Whyte* (1851), 5 Cox, C. C. 290; *R.* v. *Bontien* (1813), Russ. & Ry. 260; *R.* v. *Peacock, supra;* see *R.* v. *Aickles* (1787), 1 Leach, 438; see 2 East, P. C. 969.

(*d*) *R.* v. *Rogers* (1838), 8 C. & P. 629; *R.* v. *Taft* (1777), 1 Leach, 172; *R.* v. *Bolland* (1772), 1 Leach, 83; *R.* v. *Taylor* (1779), 1 Leach, 214; *R.* v. *Mitchell* (1847), 1 Den. 282; *R.* v. *Lockett* (1772), 1 Leach, 94 (signing a fictitious name as the pretended drawer of a cheque). Proof that no person of the drawer's name keeps an account or has a right to draw cheque on the drawee is *primâ facie* evidence that the drawer is a fictitious person (*R.* v. *Backler* (1831), 5 C. & P. 118; and see *R.* v. *Ashby* (1860), 2 F. & F. 560).

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that the money obtained by the uttering of the forged indorsement might equally have been obtained by a true indorsement (*e*).

An acceptance written by a person in his own name to represent a fictitious firm (*e*), or an indorsement written by a person in his own name (which happens to be the same as that of the payee) with the knowledge that the real payee is another person (*f*), is forgery.

It is not forgery for anyone to pass himself off as the person whose genuine indorsement is on a bill (*g*).

Unauthorised acceptance etc.

1430. It is forgery to write or procure another person to write the acceptance of an existing person without his authority (*h*). It

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(*e*) *R.* v. *Taft* (1777), 1 Leach, 172, and *R.* v. *Taylor* (1779), 1 Leach, 214.

(*f*) *Mead* v. *Young* (1790), 4 Term Rep. 28; see also *R.* v. *Parke* (1843), 1 Cox, 4, where a bank post bill payable to J. Parke & Son, and intended for John Parke & Son, was obtained by a person carrying on business as J. Parke & Co., and indorsed by him in name of Jas. Parke & Son, a fictitious firm, intent to defraud being proved, it was held that the indorser was guilty of forgery. If A. B. with the authority of C. D., who has the same name as E. F., writes the name of C. D. for the purpose of passing a bill off as that of E. F., A. B. is guilty of forgery, and this whether E. F. is an existing or a non-existing person. But if a person gives a note entirely as his own, his signing it in a fictitious name is not forgery, if the credit is given wholly to himself without any regard to the name signed or to any third person (*R.* v. *Martin* (1879), 5 Q. B. D. 34, C. C. R.; *R.* v. *Dunn* (1765), 1 Leach, 57; *R.* v. *Parkes* (1796), 2 Leach, 775).

(*g*) *R.* v. *Hevey* (1782), 2 East, P. C. 856. A person who acted in this way might be convicted of obtaining or of attempting to obtain money by false pretences; see p. 692, *ante*. When a bill is addressed to a person whose name is given with a description and addition, and the bill is accepted by a person who bears that name but to whom the description and addition do not apply, and there is no one of that name to whom that description and addition do apply, the person who utters such a bill containing the false description is not guilty of forgery (*R.* v. *Webb* (1819), Russ. & Ry. 405); and see *R.* v. *Epps* (1864), 4 F. & F. 81, where a prisoner having induced a person to accept a bill directed to B., but having no addition, description or address, subsequently added a false address but no description, representing that the acceptance was that of "a customer," it was held there was no forgery. In these two cases there was no evidence that the prisoner intended to make the acceptance to appear to be by a person other than the actual acceptor (*ibid.*, at p. 83, per WILLES, J.). But where a prisoner induced a person to sign his name upon a blank stamp, and afterwards on the paper where the name appeared wrote a bill of exchange with the name of a drawee identical with the name signed, and added a place of payment in another town, intending the bill to appear drawn upon and accepted by another existing person of the same name as that signed, but residing in such other town, it was held that forgery had been committed (*R.* v. *Blenkinsop* (1847), 2 Car. & Kir. 531), and it is immaterial whether such other person actually exists or not (*R.* v. *Epps*, *supra*); but see *R.* v. *Watts* (1821), Russ. & Ry. 436 (where a prisoner uttered a promissory note purporting to be drawn by A. B. of Tipton and payable to prisoner, and stated at the time that A. B. kept the "Bull's Head" at Tipton, it was held that he was guilty of forgery, although there were two persons of the drawer's name at Tipton, and only the one who kept the "Bull's Head" was called to deny the signature); *R.* v. *Hampton* (1830), 1 Mood. C. C. 255, where a bill purported to be accepted by A. B., draper, Birmingham; upon A. B.'s evidence that he knew no other draper at Birmingham of his name, it was held there was evidence for the jury that he was the only draper in Birmingham of that name (*R.* v. *White* (1861), 2 F. & F. 554; see also *R.* v. *King* (1832), 5 C. & P. 123). If a bill purports to be accepted by A. B., and A. B. on being shown the bill says it is a "good bill," this is evidence for the jury that A. B. wrote the acceptance (*R.* v. *Hevey* (1782), 1 Leach, 232).

(*h*) *R.* v. *Rogers* (1838), 8 C. & P. 629; *R.* v. *Mitchell* (1844), 1 Den. 282, n. In

is immaterial that the person writing such acceptance may believe either that he will be able to pay the bill or that the person defrauded will refrain from prosecuting (*i*). But authority may be implied from acts, and a person who signs another person's name on a bill believing upon reasonable grounds that he has authority is not guilty of forgery (*k*).

It is forgery to indorse a bill by procuration under a false and fraudulent assumption of authority so to indorse it (*l*).

If a person holding a blank cheque or acceptance with authority to fill it up for a certain amount fills it up for a larger amount, he commits forgery (*m*), even though he believes such larger amount to be due to him from the owner of the cheque (*n*).

(iv.) *Exchequer Bills etc.*

Forging Exchequer bills etc.

1431. Everyone is by statute (*o*) guilty of felony who with intent to defraud forges or alters or knowingly utters, disposes, or puts off with knowledge that it is forged or altered any Exchequer bill, including a Treasury bill (*p*), and a war bond (*q*), Exchequer bond or Exchequer debenture, or indorsement thereon, or assignment thereof, or any receipt or certificate for interest accruing thereon.

The punishment for such offence is penal servitude for life or for any period not less than three years, or imprisonment for not more than two years, with or without hard labour (*r*).

Making etc. instruments etc. for forging Exchequer bills etc.

1432. Everyone is by statute (*s*) guilty of felony who without lawful authority or excuse (*t*) makes or causes to be made or assists in making, or knowingly has custody or possession of (1) any frame, mould, or instrument having therein any words, letters, figures, marks, lines, or devices, peculiar to and appearing in the substance of any

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the case of forgery of a receipt it was held sufficient if the prisoner by letter directed his innocent agent that he was "at liberty" to sign the name of a third person (*R.* v. *Clifford* (1845), 2 Car. & Kir. 202).

(*i*) *R.* v. *Forbes* (1835), 7 C. & P. 224; *R.* v. *Beard* (1837), 8 C. & P. 143. See intent to defraud, p. 713, *ante*. On a charge of uttering a forged bill it is immaterial that the bill has since been paid by the prisoner, if the offence has been completed at the time of uttering (*R.* v. *Geach* (1840), 9 C. & P. 499).

(*k*) *R.* v. *Beard*, *supra*, at p. 150; *R.* v. *Forbes*, *supra*. The intimacy of the parties, and the fact that the prisoner's act has been ratified on a previous occasion may be taken into account (*R.* v. *Parish* (1837), 8 C. & P. 94).

(*l*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 24. Before that Act it was not forgery; see *R.* v. *White* (1847), 2 Car. & Kir. 404.

(*m*) *R.* v. *Hart* (1836), 7 C. & P. 652; *R.* v. *Bateman* (1845), 1 Cox, C. C. 186; *R.* v. *Wilson* (1847), 2 Car. & Kir. 527. In all cases there must be the intent to defraud. As to evidence of the intent, see p. 380, *ante*, and p. 764, *post*.

(*n*) *R.* v. *Wilson* (1847), 2 Car. & Kir. 527, and intent to defraud, p. 713, *ante*.

(*o*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 8.

(*p*) Treasury Bills Act, 1877 (40 & 41 Vict. c. 2), s. 10.

(*q*) Under the War Loan Act, 1900 (War Loan Act, 1900 (63 & 64 Vict. c. 2), s. 4 (3)).

(*r*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 8; Exchequer Bills and Bonds Act, 1866 (29 & 30 Vict. c. 25), ss. 15, 25; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*s*) Forgery Act, 1861 (24 & 25 Vict. c. 98), ss. 9, 10.

(*t*) The onus of proof of such authority or excuse in each case lies on the party accused (ss. 9, 10).

SECT. 4. Forgery.

paper provided or to be provided or used for Exchequer bills (*a*), bonds, or debentures (*b*); (2) any machinery for working any threads into the substance of any paper or any such thread, and intended to imitate such words, letters, figures, marks, lines, threads, or devices; or (3) any plate peculiarly employed for printing such exchequer bills, bonds, or debentures; or (4) any die or seal peculiarly used for preparing any such plate or for sealing such Exchequer bills, bonds, or debentures as aforesaid; (5) any plate, die, or seal intended to imitate any such plate, die, or seal as aforesaid (*c*); (6) any paper in the substance of which shall appear any such words, letters, figures, marks, lines, threads, or other devices as aforesaid, or any part of such words etc. intended to imitate such words etc. (*d*); also everyone who (7) causes or assists in causing such words, letters, figures, marks, lines, threads, or other devices, or parts thereof, intended to imitate the same to appear in the substance of any paper whatever (*e*); or (8) takes or assists in taking any impression of any such plate, die, or seal as aforesaid (*e*).

The punishment for any such offence is penal servitude for seven years, or for any period not less than three years, or imprisonment for any period not exceeding two years, with or without hard labour (*f*).

Purchase of paper provided for Exchequer bills etc.

1433. Everyone is by statute (*g*) guilty of misdemeanour who without lawful authority or excuse (*h*) purchases or receives or knowingly has custody or possession of (1) any paper manufactured or provided by or under authority of the Inland Revenue Commissioners or Commissioners of the Treasury for the purpose of being used as Treasury bills (*i*), war bonds (*k*), Exchequer bills, bonds, or debentures, before such paper shall have been duly stamped, signed, and issued for public use; (2) any such plate, die or seal as aforesaid.

The punishment for such offence is imprisonment for any term not more than five nor less than three years with or without hard labour (*l*).

(*a*) The term "Exchequer bill" includes Treasury bills (Treasury Bills Act, 1877 (40 & 41 Vict. c. 2), s. 10; war bonds (War Loan Act, 1900 (63 & 64 Vict. c. 2), s. 4 (3)); and Metropolitan bills (Metropolitan Board of Works (Money) Act, 1883 (46 & 47 Vict. c. 27), s. 21).

(*b*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 9.

(*c*) *Ibid.*

(*d*) *Ibid.*, s. 10.

(*e*) *Ibid.*

(*f*) *Ibid.*, ss. 9, 10, as altered by the Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1; see also the Exchequer Bills and Bonds Act, 1866 (29 & 30 Vict. c. 25), ss. 20, 21, 25, which deals with the manufacturing and unlawful possession of paper, plates etc. intended to imitate those used for Exchequer bills. The offence is not triable at quarter sessions; but see Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), s. 1.

(*g*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 11.

(*h*) The onus of proof of such authority or excuse lies on the party accused (*ibid.*, s. 11).

(*i*) Treasury Bills Act, 1877 (40 & 41 Vict. c. 2), s. 10.

(*k*) War Loan Act, 1900 (63 & 64 Vict. c. 2), s. 4 (3).

(*l*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 11.

Forging East India bond.

1434. Every person is by statute (*m*) guilty of felony who with intent to defraud forges, alters, or offers, utters, disposes of, or puts off, knowing that it is forged or altered, any bond commonly called an East India bond, or any bond, debenture, or security issued or made under any Act passed or to be passed relating to the East Indies, or any indorsement thereon or assignment thereof.

The punishment of this offence is penal servitude for life or for any period not less than three years, or imprisonment for any term not exceeding two years with or without hard labour (*n*).

Forging debentures.

1435. Any person is by statute (*o*) guilty of felony who fraudulently forges or alters or offers, utters, disposes of, or puts off, knowing that it is forged or altered, any debenture issued under any lawful authority whatsoever either within the King's dominions or elsewhere.

The punishment for this offence is penal servitude for fourteen years or for any period not less than three years, or imprisonment for any term not exceeding two years with or without hard labour (*p*).

(v.) *Deeds etc.*

Forging deeds etc.

1436. Everyone is by statute (*q*) guilty of felony who, with intent to defraud (*r*), commits any of the following acts: (1) forges or alters any deed (*s*); (2) forges or alters any bond or writing

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(*m*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 7.

(*n*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*o*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 26. As to the meaning of "debenture," see *British India Steam Navigation Co.* v. *Inland Revenue Commissioners* (1881), 7 Q. B. D. 165; *Edmonds* v. *Blaina Furnaces Co.* (1887), 36 Ch. D. 215; *Levy* v. *Abercorris Slate and Slab Co.* (1887), 37 Ch. D. 260.

(*p*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 26; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69; Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54). The words "with intent to defraud" are omitted from this section and "fraudulently" is used instead; as to which, see *R.* v. *Powner* (1872), 12 Cox, C. C. 235. The offence is not triable at quarter sessions.

(*q*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 20.

(*r*) But not necessarily to defraud the person whose name is forged (*R.* v. *Trenfield* (1858), 1 F. & F. 43).

(*s*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 20. For the meaning of a deed within this statute, see *R.* v. *Morton* (1873), L. R. 2 C. C. R. 22, where it was held that a letter of orders under the seal of a bishop was not a deed for the purpose of this section. "Any instrument delivered as a deed which either itself passes an interest or property or is in affirmance or confirmation of something whereby an interest or property passes is a deed" (*per* BOVILL, C.J., at p. 27). *Quære* whether the probate of a will is a deed (*per* BLACKBURN, J., at p. 28). A power of attorney under seal is a deed (*ibid.*; *R.* v. *Lyon* (1813), Russ. & Ry. 255; *R.* v. *Fauntleroy* (1824), 1 C. & P. 421; see also Forgery Act, 1861 (24 & 25 Vict. c. 98), ss. 2, 4.

It is forgery under s. 20 to make a deed fraudulently with a false date, when the date is a material part of the deed, although the deed is in fact made by and between the persons by and between whom it purports to be made (*R.* v. *Ritson* (1869), L. R. 1 C. C. R. 200; and see *Re Cooper, Cooper* v. *Vesey* (1882), 20 Ch. D. 611, C. A., where a son who was heir-at-law of his father and co-executor and co-trustee under his father's will alone executed deeds in his own name as absolute owner, and it was held that such deeds were forgeries; see *per* LINDLEY, L.J., at p. 634). It is no defence to an indictment for forgery of a deed that the deed is not executed in compliance with the directory provision of a statute, if

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obligatory (*a*), or assignment of such bond or writing obligatory; or (3) knowingly utters, disposes of, or puts off with knowledge that it is forged or altered, any forged or altered deed or bond or writing obligatory, or assignment of such bond or writing obligatory (*b*); (4) forges any name, handwriting, or signature purporting to be that of an attesting witness to a deed or bond or writing obligatory; (5) offers, utters, disposes of, or puts off any deed, bond, or writing obligatory, having a name, handwriting, or signature so forged, with knowledge that it is forged (*c*).

The punishment for such offence is penal servitude for life or for any period not less than three years, or imprisonment for any period not exceeding two years, with or without hard labour (*d*).

Forging will.

1437. Everyone is by statute (*e*) guilty of felony who with intent to defraud (*f*), forges or alters any will, testament, codicil, or testamentary instrument, whether or no such instrument be designated by any special name in any statute, or offers, utters, disposes of or puts off any such instrument knowing it to be forged or altered.

The punishment is the same as in the case of the last-mentioned offence (*g*).

It is not necessary to constitute this offence that the person whose will is forged should be deceased (*h*), or should ever have existed (*i*).

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the non-compliance with such provision does not make the deed void (*R.* v. *Lyon* (1813), Russ. & Ry. 255). *Aliter*, it seems, if the deed as executed would be wholly void.

(*a*) See as to an administration bond *R.* v. *Barber* (1844), 1 Car. & Kir. 434. In *R.* v. *Dunnett* (1792), 2 Leach, 581, on the construction of the words "bond, writing obligatory" in the Perjury Act, 1728 (2 Geo. 2, c. 25), s. 1, it was held that a bond was rightly described as a "bond and writing obligatory," although it had no condition with a penalty or defeasance attached to it. Any security (other than debenture stock) issued under the Local Loans Act, 1875 (38 & 39 Vict. c. 83), is a writing obligatory within this section; see *ibid.*, s. 32.

(*b*) See note (*a*), *supra;* Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 20. It is forgery to put a seal fraudulently to a document which is invalid without seal after such document has been signed (or marked), but it is not forgery to induce a person to execute a deed by misrepresenting its legal effect (*R.* v. *Collins* (1843), 2 Mood. & R. 461, 466; compare *R.* v. *Chadwick* (1844), 2 Mood. & R. 545). Where a bond is joint and several, an indictment lies for the forgery of one signature, although the other signature is genuine (*R.* v. *Richards* (1844), 1 Cox, C. C. 62).

(*c*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 20.

(*d*) *Ibid.*, as altered by the Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*e*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 39.

(*f*) A prisoner in a case tried before the statute (*R.* v. *Tufts* (1848), 3 Cox, C. C. 160, C. C. R.) was proved to have forged the will of his father, but in the absence of proof that any person had been defrauded thereby, it was held that he could not be convicted of intent to defraud any person. See intent to defraud, *ante*.

(*g*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 39, and see note (*d*), *supra*.

(*h*) The offence consists in the fraudulent making of the will, not in the legal effect of the forgery (*R.* v. *Coogan* (1787), 2 East, P. C. 948; *R.* v. *Stirling* (1773), 1 Leach, 99).

(*i*) *R.* v. *Avery* (1838), 8 C. & P. 596 (under the corresponding section (s. 3) of Forgery Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 66)). The offence is none the less committed, although the correct christian name of the supposed testator is not signed (*R.* v. *Fitzgerald* (1741), 1 Leach, 20). The rule which prohibits the giving in evidence of documents placed in a solicitor's hands in professional

(vi.) *Forging the King's Seals.*

Forging the King's seals.

1438. Everyone is by statute (*k*) guilty of felony, (1) who forges or counterfeits any of the King's seals or the stamp or impression thereof; or (2) who utters, knowing it to be forged or counterfeited, any such seal, stamp, or impression (or any forged or counterfeited stamp or impression apparently intended to resemble such stamp or impression); or (3) who forges or alters, or utters, knowing it to be forged or altered, any document or instrument bearing such stamps or impressions.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment not exceeding two years with or without hard labour (*k*). These offences are not triable at quarter sessions (*l*).

(vii.) *Records, Processes of Court, and Instruments of Evidence.*

Forging record of court etc.

1439. A person is guilty by statute (*m*) of felony who with intent to defraud (*n*) commits any of the following offences:—

(1) Forges or fraudulently alters or knowingly offers, utters, disposes of, or puts off with knowledge that it is forged, any record or other original document of any court of record or court of equity or Court of Admiralty in England or Ireland, or any document or writing or copy thereof intended to be used as evidence in any such court (*o*).

(2) Being a clerk of any court (whether of record or not) or other officer having custody of the records (*p*) of any such court, or the deputy of any such clerk or officer, utters any false copy or certificate of any record knowing such copy etc. to be false, or not being such

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confidence does not apply to the case of a forged will given by a prisoner to his solicitor ostensibly for the purpose of seeking professional advice but in reality with the intention that the solicitor shall act upon it; such will may accordingly be called for and read (*R.* v. *Jones* (1846), 1 Den. 166; see also *R.* v. *Tufts* (1848), 3 Cox, C. C. 160, 162, 163, C. C. R., and *R.* v. *Farley* (1846), 2 Car. & Kir. 313; *R.* v. *Avery* (1838), 8 C. & P. 596). Unrevoked probate of a will is not conclusive evidence of its validity, so as to be a bar to a prosecution for forgery of the will (*R.* v. *Buttery* (1818), Russ. & Ry. 342, 343, n.). Where persons were charged jointly with procuring another person to utter a forged will, and the evidence showed no joint act, but only separate acts, it was held nevertheless that all might be convicted (*R.* v. *Barber and Others* (1844), 1 Car. & Kir. 442).

(*k*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 1.

(*l*) Quarter Sessions Act, 1841 (5 & 6 Vict. c. 38), s. 1.

(*m*) Forgery Act, 1861 (24 & 25 Vict. c. 98), ss. 27—29.

(*n*) Though the words "with intent to defraud" do not appear in ss. 27—29 of the Forgery Act, 1861, they are imported into s. 28 (and similarly, it is apprehended, into ss. 27 and 29) from the common law definition of forgery, and must be alleged in the indictment (*R.* v. *Powner* (1872), 12 Cox, C. C. 235).

(*o*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 27. The documents specified are any record, writ, return, panel, process, rule, order, warrant, interrogatory, deposition, affidavit, affirmation, recognisance, *cognovit actionem*, warrant of attorney, bill, petition, process, notice, rule, answer, pleading, report, or decree (*ibid.*, s. 27).

(*p*) "Records" include official documents kept as records for the purpose of the court, and not necessarily connected with litigation; but the register of ordinations is not the record of a bishop's court (*R.* v. *Etheridge* (1901), 19 Cox, C. C. 676).

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clerk, officer or deputy, signs or certifies any copy or certificate of any record as such clerk, officer or deputy (*q*).

(3) Forges or fraudulently alters or utters etc. with knowledge that it is forged etc. any copy or certificate of any record (*r*) which is forged etc., or utters etc. any copy of a certificate of a record which has thereon a false or forged name, handwriting, or signature with knowledge that the name etc. is false etc. (*s*).

(4) Being a clerk, officer, or deputy having custody of the records of a court where an offender has been convicted, utters a false certificate of indictment and conviction for a felony, or not being such clerk etc. utters any such certificate with a false or counterfeit signature (*t*).

(5) Forges the seal of any court of record (*a*).

(6) Forges or fraudulently alters any process (*b*) of any court other than a court of record (*c*), or a court of equity, or a court of Admiralty in England or Ireland, or serves or enforces any forged process (*b*) of any court whatsoever, knowing that it is forged, or delivers or causes to be delivered to any person any paper falsely purporting to be such process (*d*) or a copy thereof, or any judgment, decree, or order of any court of law or equity or a copy thereof, or knowing that such process is false acts or professes to act under any such false process (*e*).

(*q*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 28.

(*r*) As to records, see p. 735, *ante*.

(*s*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 28.

(*t*) Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 11. There are similar provisions as to forging or uttering a certificate of an acquittal under the Crown Cases Act, 1848 (11 & 12 Vict. c. 78), s. 6, but the maximum sentence of penal servitude for such an offence is ten years (*ibid.*, s. 6).

(*a*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 28; see also the Inferior Courts Act, 1844 (7 & 8 Vict. c. 19), s. 5; the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 28; the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 180.

(*b*) An affiliation order is a "process" (*R.* v. *Powner* (1872), 12 Cox, C. C. 235).

(*c*) As to forging the process of a county court, see also the County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 180, which is similarly worded and includes "acting or professing to act under any false colour or pretence of the process or authority" of the court; it was held under the corresponding section of an older County Court Act, 1846 (9 & 10 Vict. c. 95), s. 57, that "acting or professing to act" applies to the use of false instruments and not to mere false representations as to authority (*R.* v. *Myott* (1853), 6 Cox, C. C. 406).

(*d*) An ordinary notice to produce does not "purport" to be a process of the court by reason of any heading which may be put to it, or by reason that it may have been intended to be thought such (*R.* v. *Castle* (1857), 7 Cox, C. C. 375, C. C. R.).

(*e*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 28; and see the Inferior Courts Act, 1844 (7 & 8 Vict. c. 19), s. 5; and *R.* v. *Rippier* (1897), 32 L. J. 350; *R.* v. *Myott*, *supra*. Where a prisoner filled up a blank form of summons, and signed it "W. G., Registrar of the T. Court," and indorsed a notice that unless the claim were paid by a certain day an execution warrant would be issued, it was held that he had professed to act under a false colour or pretence of the T. Court, within the Act of 1846 (9 & 10 Vict. c. 95), s. 57 (since repealed) (*R.* v. *Richmond* (1859), 8 Cox, C. C. 200, C. C. R.). It was sufficient under this Act if the prisoner pretended to act under the process of the county court, though, in fact, the document was not a county court document, and bore no resemblance thereto (*R.* v. *Evans* (1857), 7 Cox, C. C. 293, C. C. R.; but see *R.* v. *Castle*, *supra*). As to the case of a county court process irregularly issued in blank, to be subsequently filled in, see *R.* v. *Collier* (1831), 5 C. & P. 160.

(7) Forges or fraudulently alters or utters etc. with knowledge that is forged etc. any instrument which is or may be made evidence, by any Act passed or to be passed, and for the forgery or uttering of which no punishment is provided in the Forgery Act, 1861 (*f*).

The punishment for any such offence is penal servitude for not more than seven years or for not less than three years, or imprisonment for not more than two years with or without hard labour (*g*).

Falsely certifying copy of record etc.

1440. Everyone is by statute (*h*) guilty of a felony who :—

(1) Belonging to or being employed in the Public Record Office certifies any writing as a true and authentic copy of a record in the custody of the Master of the Rolls with knowledge that such writing is false in a material part.

(2) Counterfeits the signature of an assistant record keeper for the purpose of counterfeiting a certified copy of a record, or forges or counterfeits the seal of the Public Record Office.

The punishment for these offences is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*i*).

Forging of seal etc. of certificate.

1441. Every person is by statute guilty of felony who :—

(1) Forges the seal, stamp, or signature of any certificate, official or public document, or document or proceeding of any corporation, joint-stock or other company, or of any certified copy of any document, bye-law, entry in any register or other book, or other proceeding, if such certificate etc. or certified copy is receivable in evidence under the Evidence Act, 1845 (*k*) ;

(2) Tenders in evidence any such certificate etc. with a counterfeit seal, stamp, or signature with knowledge that such seal etc. is counterfeit (*l*) ;

(3) Forges the signature of any judge of the superior courts to any order, decree, certificate, or other judicial or official document (*m*) ;

(4) Tenders in evidence any such order etc. with a counterfeit signature with knowledge that it is counterfeit (*n*) ;

(5) Prints any copy of any private Act or of the journals of either House of Parliament which falsely purports to have been printed by the printers to the Crown or to either House of Parliament (*o*) ;

(6) Tenders in evidence any such copy with knowledge that it was not printed by the person by whom it purports to have been printed (*p*).

(*f*) 24 & 25 Vict. c. 98, s. 29. The instrument may be written, or printed, or partly written and partly printed.

(*g*) *Ibid.*, ss. 27—29 ; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offences are not be triable at quarter sessions.

(*h*) Public Record Office Act, 1838 (1 & 2 Vict. c. 94), s. 19 ; see ss. 8, 20.

(*i*) *Ibid.* ; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. These offences are not triable at quarter sessions.

(*k*) 8 & 9 Vict. c. 113 ; see s. 4.

(*l*) *Ibid.*, s. 4.

(*m*) *Ibid.*, s. 4.

(*n*) *Ibid.*, s. 4.

(*o*) *Ibid.*, s. 4.

(*p*) *Ibid.*, s. 4. These offences are not triable at quarter sessions.

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The punishment for these offences is penal servitude for not more than ten nor less than three years, or imprisonment with or without hard labour for not more than two years (*q*).

Forgery of evidence.

1442. Everyone is by statute (*r*) guilty of felony who :—

(1) Forges the seal, stamp, or signature of any document mentioned or referred to in the Evidence Act, 1851 ;

(2) Tenders in evidence any such document with a counterfeit seal etc. with knowledge that such seal etc. is counterfeit.

The punishment for these offences is penal servitude for not more than seven nor less than three years, and imprisonment with or without hard labour for not more than two years (*s*).

Forging signatures of probate registrar etc.

1443. Everyone is by statute (*a*) guilty of felony who :—

(1) Forges the signature of any probate registrar or district registrar or any commissioner for taking oaths (*a*) ;

(2) Forges the seal used in the probate branch of the Probate, Divorce and Admiralty Division of the High Court of Justice (*b*) ;

(3) Knowingly uses or concurs in using any such counterfeit signature or seal or tenders in evidence any document with such counterfeit signature or seal with knowledge that it is counterfeit (*c*).

The punishment for these offences is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*d*).

False copy of proclamation etc.

1444. Every person is by statute (*e*) guilty of felony who :—

(1) Prints any copy of any proclamation, order, or regulation which falsely purports to have been printed by the Government printer or under the authority of any British colony or possession (*e*) ;

(2) Tenders in evidence any copy of any such proclamation etc. falsely purporting to have been printed as aforesaid with knowledge that it was not so printed (*f*) ;

(3) Forges or tenders in evidence with knowledge that it is forged any certificate authorised by the Documentary Evidence Act,

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(*q*) 8 & 9 Vict. c. 113, s. 4 ; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*r*) Evidence Act, 1851 (14 & 15 Vict. c. 99), s. 17.

(*s*) *Ibid.* ; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The documents mentioned are—foreign and colonial acts of state, judgments, decrees, orders, and other judicial proceedings of any court of justice in any foreign state or British colony, and affidavits, pleadings, and other legal documents deposited in any such court (s. 7) ; apothecaries' certificates (s. 8) ; registers of British vessels and certificates of registry (s. 12, now repealed) ; certified copies of records of a previous conviction or acquittal (s. 13) ; examined or certified copies of public documents admissible in evidence on production from the proper custody (Evidence Act, 1851 (14 & 15 Vict. c. 99), s. 14). These offences are not triable at quarter sessions.

(*a*) Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 28 ; see Judicature Act, 1873 (36 & 37 Vict. c. 66), ss. 16, 34.

(*b*) *Ibid.*

(*c*) *Ibid.*

(*d*) *Ibid.* ; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*e*) Documentary Evidence Act, 1868 (31 & 32 Vict. c. 37), s. 4 (1).

(*f*) *Ibid.*

1868 (*g*), to be annexed to a copy of or extract from any proclamation, order, or regulation (*h*);

(4) Prints any copy of any Act, proclamation, order, regulation, royal warrant, circular, list, gazette, or document falsely purporting to be printed under the superintendence or authority of His Majesty's Stationery Office (*i*);

(5) Tenders in evidence any copy falsely purporting to have been printed as aforesaid with knowledge that it was not so printed (*i*);

(6) Forges, counterfeits, or fraudulently alters the seal or signature of any person authorised under the Commissioners for Oaths Act, 1889 (*k*), to administer an oath;

(7) Tenders in evidence or otherwise uses an affidavit having any seal or signature so forged or counterfeited or fraudulently altered with knowledge that it is forged etc. (*l*);

(8) Forges the signature of a Master in Lunacy or forges or counterfeits the seal of the office of such Master (*m*);

(9) Knowingly concurs in using any such forged or counterfeited signature or seal, or tenders in evidence any document with such false or counterfeit signature or seal with knowledge that such signature or seal is false or counterfeit (*n*).

The punishment for these offences is penal servitude for not more than seven and not less than three years, or imprisonment with or without hard labour for not more than two years (*n*).

Forging summons etc. of justice of the peace.

1445. Every person is by statute (*o*) guilty of felony who with intent to defraud forges or alters or utters etc. with knowledge that it is forged etc. any summons, conviction, order, or warrant of any justice of the peace, or any recognisance purporting to have been entered into before any such justice or other officer authorised to take it, or any examination, deposition, affidavit, affirmation, or solemn declaration taken or made before such justice.

The punishment for this offence is penal servitude for a term not exceeding five years or for not less than three years, or imprisonment with or without hard labour for a term not exceeding two years (*p*).

Falsely acknowledging recognisance.

1446. Every person is by statute guilty of felony who without lawful authority or excuse in the name of any other person acknowledges any recognisance of bail or any *cognovit actionem* or

(*g*) 31 & 32 Vict. c. 37.
(*h*) *Ibid.*, s. 4.
(*i*) Documentary Evidence Act, 1882 (45 Vict. c. 9), s. 3.
(*k*) 52 Vict. c. 10.
(*l*) *Ibid.*, s. 8.
(*m*) Lunacy Act, 1890 (53 Vict. c. 5), s. 147.
(*n*) Documentary Evidence Act, 1868 (31 & 32 Vict. c. 37), s. 4 (1); Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 8; Documentary Evidence Act, 1882 (45 Vict. c. 9), s. 3; Commissioners for Oaths Act, 1889 (52 Vict. c. 10), s. 8; Lunacy Act, 1890 (53 Vict. c. 5), s. 147; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. These offences are not triable at quarter sessions.
(*o*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 32.
(*p*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

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judgment, or any deed or other instrument before any court, judge, or other person lawfully authorised in that behalf (*q*).

The punishment is the same as for the last-mentioned felony, except that the maximum term of penal servitude is seven years (*r*).

Forging seal or signature under Municipal Corporations Act, 1882.

1447. Every person is by statute (*s*) guilty of a misdemeanour who:—

(1) Forges the seal or signature affixed or subscribed to a bye-law made under the Municipal Corporations Act, 1882 (*a*), or the signature subscribed to any minute of proceedings of a municipal borough council under that Act;

(2) Tenders in evidence any such document with a false or counterfeit seal or signature knowing that it is false or counterfeit.

The punishment for these offences on conviction is imprisonment with or without hard labour for not more than two years (*b*).

Forging court roll etc.

1448. Every person is by statute (*c*) guilty of felony who with intent to defraud forges or alters or offers, utters etc., with knowledge that it is forged or altered, any court roll or copy of any court roll relating to any copyhold or customary estate.

The punishment for this offence is penal servitude for life or for a term not less than three years, or imprisonment with or without hard labour for a term not exceeding two years (*d*).

Forging memorial etc. under Acts for registry of deeds.

1449. Every person is by statute (*e*) guilty of felony who:—

(1) Forges or fraudulently alters or offers, utters etc., with knowledge that it is forged or fraudulently altered, any memorial, affidavit, affirmation, entry, certificate, indorsement, document, or writing made or issued under the provisions of any Act passed or to be passed for or relating to the registry of deeds (*e*);

(2) Forges or counterfeits the seal of any office for the registry of deeds, or any stamp or impression of any such seal (*f*);

(3) Forges any name, handwriting, or signature purporting to be the name, handwriting, or signature to any such memorial etc. required or directed to be signed by or by virtue of any Act passed or to be passed (*f*);

(4) Offers, utters etc. any such memorial or other writing having any such forged stamp or impression of any such seal or any such forged name etc., with knowledge that it is forged (*g*).

(*q*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 34.
(*r*) *Ibid.*, s. 34. This offence is not triable at quarter sessions.
(*s*) 45 & 46 Vict. c. 50, s. 235.
(*a*) 45 & 46 Vict. c. 50.
(*b*) *Ibid.*, s. 17. This offence is not triable at quarter sessions. On summary conviction the punishment is imprisonment for any term not exceeding three months (*ibid.*).
(*c*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 30.
(*d*) *Ibid.*, s. 30; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.
(*e*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 31; see also Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 100. As to the Acts for registering deeds, see title REAL PROPERTY AND CHATTELS REAL.
(*f*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 31.
(*g*) *Ibid.* The section makes no reference to intent to defraud, but it is none the less necessary to allege and prove such intent (see p. 713, *ante*).

The punishment for these offences is penal servitude for a term not exceeding fourteen years or for not less than three years, or imprisonment with or without hard labour for any term not exceeding two years (*h*).

Fraudulently procuring entry on land register.

1450. Every person is by statute (*i*) guilty of a misdemeanour who fraudulently procures or is privy to the fraudulent procurement of any entry on the land register established under the Land Transfer Act, 1875, or of any erasure from such register or alteration of the register (*k*).

The punishment for such offence is imprisonment with or without hard labour for any term not exceeding two years, or such fine not exceeding £500 as the court before which the offender is tried may award (*k*).

Forging certificate under Declaration of Title Act, 1862.

1451. Everyone is by statute (*l*) guilty of felony who forges, alters, or utters a certificate or document relating to land or title under the Declaration of Title Act, 1862 (*m*).

The punishment for such offence is penal servitude for life or for not less than three years, or imprisonment for any term not more than two years with or without hard labour (*n*).

False certificate.

1452. Everyone is by statute (*o*) guilty of a misdemeanour who, being an officer authorised or required by the Evidence Act, 1851 (*p*), to furnish any certified copies or extracts, wilfully certifies a document as being a true copy or extract when the same is not a true copy or extract.

The punishment for this offence is imprisonment without hard labour for not more than eighteen months (*q*).

Destroying etc. register of births etc.

1453. Everyone is by statute (*r*) guilty of felony who :—

(1) Unlawfully destroys, defaces, or injures or causes or permits to be destroyed, defaced, or injured the whole or part of any register of births, baptisms, marriages, deaths, or burials authorised or required by law to be kept in England or Ireland, or the whole or part of any certified copy of the whole or part of such register (*r*) ;

(2) Forges or fraudulently alters in any such register or part of it any entry relating to any birth etc., or any certified copy of such register or of any part thereof (*s*) ;

(*h*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 31 ; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*i*) 38 & 39 Vict. c. 87, s. 5.

(*k*) *Ibid.*, s. 100. This offence is not triable at quarter sessions.

(*l*) Declaration of Title Act, 1862 (25 & 26 Vict. c. 67), s. 45.

(*m*) 25 & 26 Vict. c. 67.

(*n*) *Ibid.*, s. 45 ; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*o*) Evidence Act, 1851 (14 & 15 Vict. c. 99), s. 15.

(*p*) Evidence Act, 1851 (14 & 15 Vict. c. 99).

(*q*) *Ibid.*, s. 15. This offence is not triable at quarter sessions.

(*r*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 36. As to the register of births etc., see title REGISTRATION OF BIRTHS AND DEATHS ; see too Non-parochial Registers Act, 1840 (3 & 4 Vict. c. 92), s. 8 ; Births and Deaths Registration Act, 1858 (21 & 22 Vict. c. 25), s. 3 ; Burial Act, 1857 (20 & 21 Vict. c. 81), s. 15.

(*s*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 36. See *R.* v. *Bowen* (1844),

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(3) Knowingly and unlawfully inserts or causes or permits to be inserted in such register or any certified copy thereof any false entry of any matter relating to any birth etc. (*t*);

(4) Knowingly and unlawfully gives any false certificate relating to any birth etc. (*u*);

(5) Certifies any writing to be a copy or extract from any such register knowing such writing or the part of such register whereof such copy or extract is given to be false in any material particular (*u*);

Forging etc. registers etc.

(6) Forges or counterfeits the seal of or belonging to any register office or burial board (*u*);

(7) Utters etc. any such register, entry, certified copy, certificate, or seal, or any copy of any entry in any such register with knowledge that it is false (*v*);

(8) Knowingly and wilfully inserts or causes or permits to be inserted in any copy of any register directed or required by law to be transmitted to any registrar or other officer any false entry of any matter relating to any baptism, marriage, or burial (*x*);

(9) Forges or alters or utters with knowledge that it is forged etc. any copy of any such register (*a*);

(10) Wilfully signs or verifies any copy of any such register which copy is false in any part with knowledge that it is false (*b*);

(11) Unlawfully destroys, defaces, or injures or for any fraudulent purpose takes from its place of deposit or conceals any such copy of any register (*c*).

The punishment for any such offence is penal servitude for life or for any period not less than three years, or imprisonment for any term not exceeding two years with or without hard labour (*d*).

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1 Den. 22. As to intent to defraud, see *R.* v. *Powner* (1872), 12 Cox, C. C. 235; Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 36; see also Non-parochial Registers Act, 1840 (3 & 4 Vict. c. 92), s. 8, as amended by the Births and Deaths Registration Act, 1858 (21 & 22 Vict. c. 25); and Burial Act, 1857 (20 & 21 Vict. c. 81).

(*t*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 36. It is not necessary that such entry should be made with intent to defraud, nor is it necessary (where the matter relates to witnessing a marriage) that the marriage should be legal or the witness a necessary witness (*R.* v. *Asplin* (1873), 12 Cox, C. C. 391). As to causing a false entry to be inserted, see *R.* v. *Mason* (1848), 2 Car. & Kir. 622).

(*u*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 36; see also Non-parochial Registers Act, 1840 (3 & 4 Vict. c. 92), s. 8, as amended by Births and Deaths Registration Act, 1858 (21 & 22 Vict. c. 25), s. 3; and Burial Act, 1857 (20 & 21 Vict. c. 81), s. 15.

(*v*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 36. If A. hands a forged certificate of a marriage to B., an accomplice, in order that she may show it to C., this is not an uttering by A. within the section, even though B. does show it to C. (*R.* v. *Heywood* (1847), 2 Car. & Kir. 352); but *quære* whether it is not a disposing of or putting off (see *R.* v. *Palmer* (1804), Russ. & Ry. 72).

(*x*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 37.

(*a*) *Ibid.*

(*b*) *Ibid.*

(*c*) *Ibid.* These words were added to meet the case of *R.* v. *Bowen* (1844), 1 Den. 22.

(*d*) Forgery Act, 1861 (24 & 25 Vict. c. 98), ss. 36, 37; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. These offences are not triable at quarter sessions.

SECT. 4.
Forgery.

Making false certificate etc. under Births and Deaths Registration Act, 1874.

1454. Everyone is by statute guilty of a misdemeanour who wilfully makes any false certificate or declaration under the Births and Deaths Registration Act, 1874 (*e*), or forges or falsifies any such certificate or declaration or order made under the same Act, or knowingly uses, gives, or sends any such false or forged certificate, declaration, or order as true.

The punishment for this offence on conviction on indictment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years (*f*).

Forging marriage licence.

1455. Everyone is by statute (*g*) guilty of felony who forges or fraudulently alters any licence or certificate for marriage or utters etc. any such licence etc. with knowledge that it is forged etc.

The punishment for this offence is penal servitude for not more than seven nor less than three years, and imprisonment with or without hard labour for not more than two years (*h*).

Making false entry in registry book of Stationers' Company.

1456. Every person is by statute (*i*) guilty of a misdemeanour who :—

(1) Wilfully makes or causes to be made any false entry in the registry book of the Stationers' Company;

(2) Wilfully produces or causes to be tendered in evidence any paper falsely purporting to be a copy of any entry in such book.

The punishment for this offence is imprisonment without hard labour, or by fine or both (*k*).

Making false entry in register under Trade Marks Act, 1905 etc.

1457. Any person is by statute guilty of a misdemeanour who :—

(1) Makes or causes to be made a false entry in the register kept under the Trade Marks Act, 1905 (*l*);

(2) Makes or causes to be made a false entry in a register kept under the Patents and Designs Act, 1907 (*m*), or a writing falsely purporting to be a copy of an entry in any such register (*n*);

(3) Produces or tenders or causes to be produced or tendered in evidence any such writing knowing the entry or writing to be false (*o*).

The punishment for this offence is imprisonment without hard labour, or fine, or both (*p*).

(*e*) 37 & 38 Vict. c. 88; see s. 40 (2).

(*f*) *Ibid.*, s. 40 (2); Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54); Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions. On summary conviction the punishment is a penalty not exceeding £10. A prosecution or indictment for such offence must be commenced within three years after the commission of such offence (*ibid.*, s. 46). Any rector, vicar, curate, or officiating minister may correct in the prescribed mode accidental errors in a register (Forgery Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 66), s. 21).

(*g*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 35.

(*h*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*i*) Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 12.

(*k*) *Ibid.* The offence is not triable at quarter sessions.

(*l*) 5 Edw. 7, c. 15; see *ibid.*, s. 66.

(*m*) 7 Edw. 7, c. 29.

(*n*) *Ibid.*, s. 89 (1).

(*o*) *Ibid.*

(*p*) *Ibid.* This offence is not triable at quarter sessions.

SECT. 4. Forgery.

Falsifying register of pharmaceutical chemists etc.

1458. Every person is by statute guilty of a misdemeanour who:—

(1) Wilfully makes or causes to be made any falsification in any matter relating to the register of pharmaceutical chemists and chemists and druggists kept under the Pharmacy Act, 1868 (*q*);

(2) Wilfully procures or attempts to procure himself to be registered under the Pharmacy Act, 1852 (*r*), or the Pharmacy Act 1868 (*s*), by making or producing or causing to be made and produced any false or fraudulent representation or declaration, either verbally or in writing (*t*);

(3) Assists any other person in committing these offences (*t*).

The punishment for this offence is fine, or imprisonment for not more than twelve months (*a*).

(viii.) *Instruments issued by Public Officers.*

Forging certificate of Inland Revenue Commissioners.

1459. Every person is by statute guilty of felony who with intent to defraud the King or any body politic or corporate or any persons whomsoever:—

(1) Forges, counterfeits, or alters or causes or procures to be forged etc., or knowingly or wilfully assists in forging etc. any certificate of the Commissioners of Inland Revenue or any other commissioners acting in the execution of the Income Tax Act, 1842 (*b*), or any certificate or receipt which the cashier of the Bank of England or any officer for receipt is by that Act authorised to give on the receipt of any money payable under the Act (*c*);

(2) Utters any such forged etc. certificate or receipt (*c*).

The punishment for this offence is penal servitude for a period not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*d*).

Forging certificate etc. of paymaster-general etc.

1460. Every person is by statute (*e*) guilty of felony who, with intent to defraud,

(1) Forges or alters any certificate, report, entry, indorsement, declaration of trust, note, direction, authority, instrument or writing made or purporting or appearing to be made by the paymaster-general or by his deputy, clerk or officer, or by any officer of any court in England or Ireland, or by any cashier or other officer or clerk of the Bank of England or of Ireland, or by any cashier or other officer or clerk of such bank, or the names or signatures or counter-signatures of the paymaster-general or of any such cashier etc.;

(*q*) 31 & 32 Vict. c. 121.
(*r*) 15 & 16 Vict. c. 56.
(*s*) 31 & 32 Vict. c. 121.
(*t*) *Ibid.*, s. 14.
(*a*) *Ibid.* The imprisonment, it seems, is without hard labour; see p. 410, *ante*. This offence is not triable at quarter sessions.
(*b*) 5 & 6 Vict. c. 35.
(*c*) *Ibid.*, s. 181.
(*d*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.
(*e*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 33; Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44), ss. 4, 12; Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 16.

(2) Utters etc. any such certificate etc. knowing that it is forged or altered (*f*).

The punishment for these offences is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour for not more than two years (*g*).

Forging name etc. of commissioners of customs.

1461. Every person is by statute (*h*) guilty of felony who, with intent to defraud anyone,

(1) Knowingly or wilfully forges or counterfeits or causes or procures to be forged etc., or knowingly and wilfully assists in forging etc., the name or handwriting of any commissioner of customs or of any accountant and comptroller-general of customs or of any person acting for them to any draft, instrument, or writing for or in order to the receiving or obtaining any of the money in the hands of the Bank of England on account of such commissioners;

(2) Forges or counterfeits or causes or procures to be forged etc., or knowingly and wilfully assists in forging etc., any draft, instrument, or writing made in form of a draft by such accountant-general or person (*i*);

(3) Utters or publishes such forged draft etc. with knowledge that it is forged (*j*).

The punishment for these offences is penal servitude for a term not exceeding five and not less than three years, or imprisonment with or without hard labour for a period not exceeding two years (*k*).

Making etc. instruments for copying marks etc. used by Inland Revenue Commissioners.

1462. Every person is by statute guilty of felony who:—

(1) Makes or causes or procures to be made or aids in making or knowingly has possession of without authority from the Commissioners of Inland Revenue and without lawful excuse any mould or frame or other instrument having any words, figures, marks, or devices peculiar to the paper used by such commissioners for permits or with any part of such words etc. intended to imitate or pass for the same (*l*);

(2) Without such authority makes etc. any paper in the substance of which such words, figures etc. or any part of them intended to imitate and pass for the same are visible (*m*);

(*f*) See note (*e*), p. 744, *ante*.

(*g*) Forgery Act, 1861 (24 & 25 Vict, c. 98), s. 33; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*h*) Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 28.

(*i*) *Ibid.*

(*j*) *Ibid.*, s. 28.

(*k*) *Ibid.*, s. 28; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions. See also Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 168, which provides for a penalty of £100 for making false declarations or for counterfeiting any document required by the Act etc. This penalty is, it seems, recoverable summarily before justices (see *ibid.*, s. 223, and Sched. C, Counts VI. to IX.).

(*l*) Excise Permit Act, 1832 (2 & 3 Will. 4, c. 16), s. 3; Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), s. 37. Wherever these words appear in the section, the burden of proving the excuse etc. is on the person accused (Excise Permit Act, 1832 (2 & 3 Will. 4, c. 16), s. 3).

(*m*) Excise Permit Act, 1832 (2 & 3 Will. 4, c. 16), s. 3.

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(3) Without such authority knowingly has possession of without lawful excuse any such paper (*n*);

(4) Without such authority by any act, mystery, or contrivance causes or procures or assists in causing or procuring such words to appear visible in the substance of any paper (*o*);

(5) Not being duly authorised and appointed in that behalf, engraves, casts, cuts, makes or causes or procures to be engraved etc. or aids in engraving etc. any plate, type, or other thing in imitation of or to resemble any plate etc. made by the direction of such commissioners for the purpose of marking or printing paper to be used for permits (*p*);

Forging Inland Revenue documents.

(6) Not being duly authorised etc. knowingly has possession without lawful excuse of any such plate etc. (*q*);

(7) Counterfeits or forges or causes or procures to be counterfeited etc. or assists in counterfeiting etc. any permit or part of a permit, or counterfeits any impression, stamp, mark, figure or device provided or appointed by such commissioners to be put on such permit (*r*);

(8) Utters, gives or makes use of any counterfeited etc. permit knowing it or part of it is counterfeited etc. or any permit with any such counterfeited impression etc. knowing that the same is counterfeited (*s*);

(9) Knowingly or willingly accepts or receives any counterfeited etc. permit or any permit with such counterfeited impression knowing that the same is counterfeited (*t*);

(10) Without lawful authority etc. makes or causes to be made, or aids in making or knowingly has custody or possession of any paper in the substance of which appear any words etc. peculiar to and appearing in the substance of any paper provided or used by such commissioners for receiving the impression of any die or any part of such words etc. and intended to imitate or pass for the same or to any such paper used for excise licences (*a*);

(11) Causes or assists in causing any such words etc. or any part of them intended to imitate and pass for the same to appear in the substance of any paper (*b*).

The punishment for these offences is penal servitude for not more

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(*n*) Excise Permit Act, 1832 (2 & 3 Will. 4, c. 16), s. 3.
(*o*) *Ibid.*, s. 3.
(*p*) *Ibid.*, s. 3; and see s. 2.
(*q*) *Ibid.*, s. 3.
(*r*) *Ibid.*, s. 4.
(*s*) *Ibid.*
(*t*) *Ibid.* There are similar provisions as to forging etc. certificates for retailers of spirits under the Liqueur Act, 1848 (11 & 12 Vict. c. 121); see *ibid.*, s. 18. It is an offence to forge or counterfeit request notes for permits, or fraudulently to promise permits or to misapply them; the penalty for such an offence is £500, recoverable, it seems, by action (see *Advocate-General* v. *Grant* (1853), 15 Dunl. (Ct. of Sess.) 980); the offence is not made indictable (Excise Permit Act, 1832 (2 & 3 Will. 4, c. 16), s. 13).

(*a*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 14 (a); Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 12.

(*b*) *Ibid.*, s. 14 (b). The provisions relating to the punishment of offences connected with stamp duties (including those relating to paper and implements used in the manufacture of paper) are applied to similar offences connected with postal orders (see Post Office Act, 1908 (8 Edw. 7, c. 48), s. 60).

than seven nor less than three years, or imprisonment with or without hard labour for any term not exceeding two years (*c*).

Purchasing etc. paper manufactured etc. by the Inland Revenue Commissioners.

1463. Everyone is by statute (*d*) guilty of a misdemeanour who without lawful authority or excuse purchases or receives or knowingly has in his custody or possession any paper manufactured and provided by or under the direction of such commissioners for the purpose of being used for receiving the impression of any die before such paper shall have been duly stamped and issued for public use, or for the purpose of being used for excise licences, or any plate, die, dandy-roller, mould, or other implement peculiarly used in the manufacture of any such paper.

The punishment for these offences is imprisonment with or without hard labour for a term not exceeding two years (*e*).

Forging dies etc.

1464. Every person is by statute guilty of a felony who does or causes or procures to be done or knowingly aids, abets, or assists in doing any of the following acts:

(1) Forges a die or stamp used by the Commissioners of Inland Revenue (*f*);

(2) Prints or makes an impression upon any material from a forged die (*g*);

(3) Fraudulently prints or makes an impression upon any material from a genuine die (*h*);

(4) Fraudulently cuts, tears, or in any way removes from any material any stamp with intent that any use should be made of such stamp or any part thereof (*i*);

(5) Fraudulently mutilates any stamp with intent that any use should be made of any part of such stamp (*k*);

(6) Fraudulently fixes upon any material or stamp any stamp or part of a stamp which, whether fraudulently or not, has been cut etc. or removed from any other material or out of or from any other stamp (*l*);

(*c*) Excise Permit Act, 1832 (2 & 3 Will. 4, c. 16), ss. 3, 4; Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 14; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. As to possession of forged stamps, see the Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 18 (1). As to search warrants by Inland Revenue Commissioners for such stamps, see *ibid.*, s. 18 (2). This offence is not triable at quarter sessions.

(*d*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 15; Revenue Act, 1898 (61 & 62 Vict. c. 46), s. 12. As to paper used for postal orders, see Post Office Act, 1908 (8 Edw. 7, c. 48), s. 60.

(*e*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 15. This offence is not triable at quarter sessions.

(*f*) *Ibid.*, s. 13 (1). "Die" includes any plate, type, tool or implement whatever used under the direction of the Inland Revenue Commissioners for expressing or denoting any duty or rate of duty, or the fact that any duty or rate of duty or penalty has been paid, or that an instrument is duly stamped or is not chargeable with any duty, or for denoting any fee, and also part of any such plate etc. (*ibid.*, s. 27). "Stamp" means as well a stamp impressed by means of a die as an adhesive stamp for denoting any duty or fee (*ibid.*, s. 27).

(*g*) *Ibid.*, s. 13 (2).

(*h*) *Ibid.*, s. 13 (3).

(*i*) *Ibid.*, s. 13 (4); see *R.* v. *Field* (1785), 1 Leach, 383.

(*k*) *Ibid.*, s. 13 (5).

(*l*) *Ibid.*, s. 13 (6); see *R.* v. *Smith* (1831), 1 Mood. C. C. 314.

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(7) Fraudulently erases or otherwise really or apparently removes from any stamped material any name, sum, date, or other matter thereon written with the intent that any use should be made of the stamp upon such material (*m*);

(8) Knowingly sells or exposes for sale or utters or uses any forged stamp, or any stamp which has been fraudulently printed or impressed from a genuine die (*n*);

(9) Knowingly and without lawful excuse has in his possession any forged die or stamp, or any stamp which has been fraudulently printed etc. from a genuine die, or any stamp or part of a stamp which has been fraudulently cut etc. or fraudulently mutilated, or any stamped material out of which any name etc. has been fraudulently erased or otherwise either really or apparently removed (*o*).

The punishment for these offences is penal servitude for not more than fourteen nor less than three years, and imprisonment with or without hard labour for any term not exceeding two years (*p*).

Forging certificate of redemption of land tax etc.

1465. Anyone is by statute guilty of felony who:—

(1) Forges, counterfeits, or alters, or causes or procures to be forged etc., or knowingly or wilfully assists in forging any contract, assignment, certificate, receipt, or attested copy of any certificate made out or purported to be made out by any person authorised by any Act of Parliament touching the redemption or sale of the land tax or of any part thereof (*q*);

(2) Forges etc. or causes to be forged etc., or knowingly and wilfully assists in forging etc. any register of the birth or baptism or death or burial of any person to be appointed a nominee under the Government Annuities Act, 1829 (*r*), or any copy or certificate of such register, or the name of any witness to any such certificate, or any affidavit or affirmation required to be taken for any of the purposes of that Act, or any certificate of any justice etc. of any such affidavit etc. having been taken before him, or any certificate of any person authorised by the Act to grant any certificate of the life or death of any nominee (*s*);

(3) Forges etc. or causes to be forged etc., or knowingly or wilfully assists in forging etc. any declaration, warrant, order, or

(*m*) Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), s. 13 (7); see *R.* v. *Allday* (1837), 8 C. & P. 136.

(*n*) *Ibid.*, s. 13 (8). As to uttering, see *R.* v. *Collicott* (1812), Russ. & Ry. 212.

(*o*) *Ibid.*, s. 13 (9). As to lawful excuse, see *Dickins* v. *Gill*, [1896] 2 Q. B. 310.

(*p*) *Ibid.*, s. 13. This offence is not triable at quarter sessions. There are similar provisions as to the forging of stamps etc. in the Local Stamp Act, 1869 (32 & 33 Vict. c. 49), but under that Act the maximum period of penal servitude is five years (*ibid.*, s. 8); but see Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54). There are other offences relating to stamps not indictable, but punishable by a fine (see Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), ss. 20, 21). As to the making etc. of fictitious stamps in imitation of those used by the Post Office, see Post Office Act, 1908 (8 Edw. 7, c. 48), ss. 64, 65.

(*q*) Land Tax Certificates Forgery Act, 1812 (52 Geo. 3, c. 143), s. 6.

(*r*) 10 Geo. 4, c. 24.

(*s*) *Ibid.*, s. 41.

other instrument, or any affidavit or declaration required to be made under the Government Annuities Act, 1832 (*t*), or by the National Debt Commissioners, or under any of the provisions of that Act, or under any authority given them for that purpose (*a*);

(4) Forges etc. or causes to be forged etc., or knowingly or wilfully assists in forging etc. any certificate or order of such commissioners, or of any cashier or clerk of the Bank of England, or the name of any person in any transfer of any annuity, or in any certificate, order, warrant, or other instrument for the payment of money for the purchase of any annuity under the provisions of either of the two last-mentioned Acts, or in any transfer or acceptance of such annuity in the books of such commissioners, or in any receipt or discharge for such annuity, or for any payment due or to become due thereon, or in any letter of attorney or other authority or instrument to authorise such transfer etc. (*b*);

(5) Wilfully, falsely, and deceitfully personates any true and real nominee or nominees, or wilfully utters or delivers or produces to any person acting under either of the two last-mentioned Acts any forged register or copy of register of any birth, baptism or marriage, or any forged etc. declaration, affidavit or affirmation, or with knowledge that it is forged etc., with intent to defraud the King or any person (*c*).

The punishment for these offences is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*d*).

1466. Anyone is by statute (*e*) guilty of felony who:—

Forging name of Commissioners of Treasury to any power of attorney etc.

(1) Knowingly and wilfully forges or counterfeits, or assists in forging etc. the name or handwriting of the Commissioners of the Treasury, or any of them, to any power of attorney for the sale or transfer of stock, or of the Commissioners of Woods and Forests, to any draft, instrument, or writing for the purpose of obtaining any money in the hands of the Bank of England or of Ireland, or of any private banker, on account of such commissioners (*e*);

(2) Forges etc. or causes to be forged etc., or knowingly and wilfully assists in forging etc. any draft, instrument, or writing in form of a draft made by such Commissioners (*f*);

(3) Utters or publishes any such draft etc. with intent to defraud either of the said banks, or any private banker, or any other person (*g*).

(*t*) 2 & 3 Will. 4, c. 59.

(*a*) *Ibid.*, s. 19.

(*b*) Government Annuities Act, 1829 (10 Geo. 4, c. 24), s. 41; Government Annuities Act, 1832 (2 & 3 Will. 4, c. 59), s. 19.

(*c*) *Ibid.*

(*d*) Land Tax Certificates Forgery Act, 1812 (52 Geo. 3, c. 143), s. 6. There are similar provisions as to the Commissioners of Customs (Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 28; Government Annuities Act, 1829 (10 Geo. 4, c. 24), s. 41; Government Annuities Act, 1832 (2 & 3 Will. 4, c. 59); Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 48; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1). These offences are not triable at quarter sessions

(*e*) Crown Lands Act, 1829 (10 Geo. 4, c. 50), s. 124.

(*f*) *Ibid.*, s. 124.

(*g*) *Ibid.*

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The punishment for these offences is penal servitude for not more than seven or less than three years, or imprisonment with or without hard labour for not more than two years (*h*).

Forging naval certificates.

1467. Every person is by statute (*i*) guilty of a misdemeanour who :—

(1) Fraudulently counterfeits any certificate of service in the King's navy or any instrument purporting to be a protection from such service (*i*);

(2) Fraudulently utters or publishes any such forged certificate or instrument knowing it is forged (*k*);

(3) Fraudulently alters any such certificate or protection duly given (*l*);

(4) Forges or fraudulently alters any extract from a baptismal register, or knowingly utters any false extract from such register, or any false affidavit, certificate, or document in order to obtain from the Admiralty a protection from the King's naval service for himself or any other person (*m*);

(5) Being in possession of a protection lends, sells, or disposes thereof to any other person in order fraudulently to enable such other person to make an unlawful use of it (*n*);

(6) Produces, utters, or makes use of as a protection for himself a protection issued for any other person (*o*).

The punishment for these offences is imprisonment without hard labour, or fine, or both (*p*).

(ix.) *Forgery with relation to Pensions etc.*

Uttering false affidavit to obtain pension.

1468. Every person is by statute (*q*) guilty of a misdemeanour who in order to sustain any claim to any pay, wage, allotment, prize money, bounty money, grant, or other allowance in the nature thereof, half pay, pension, or allowance from the Compassionate Fund of the Navy, or other money payable by the Admiralty, or to any effects or money in charge of the Admiralty, or in order to procure any person to be admitted a pensioner as the widow of an officer of the navy—

(1) Offers or utters to any person in the service of the Crown or of the Admiralty any false affidavit with knowledge that it is false;

(2) Makes or subscribes, or offers or utters, to any such person any false written petition, application, statement, answer, certificate, or voucher, or other false writing, with knowledge that it is false (*q*).

(*h*) Crown Lands Act, 1829 (10 Geo. 4, c. 50), s. 124; Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 8; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*i*) Naval Enlistment Act, 1835 (5 & 6 Will. 4, c. 24), s. 3.

(*k*) *Ibid.*

(*l*) *Ibid.*

(*m*) *Ibid.*

(*n*) *Ibid.*

(*o*) *Ibid.*

(*p*) *Ibid.* *Quære* whether hard labour could not be awarded in these cases as for a common law cheat (see Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 29. This offence is not triable at quarter sessions.

(*q*) Admiralty Powers, etc. Act, 1865 (28 & 29 Vict. c. 124), s. 6; ss. 40—42.

The punishment for these offences on indictment is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years, or on summary conviction imprisonment with or without hard labour for not more than six months (*r*).

Forging name of officer etc. entitled to pension etc.

1469. Every person is by statute (*s*) guilty of felony who:—

(1) Forges or counterfeits, or alters, or causes or procures to be forged, or knowingly and willingly assists in forging etc. the name of any officer, non-commissioned officer, soldier, or other person entitled or supposed to be entitled to any pension, wages, pay, grant, share, allowance of money, bounty money, prize money, or relief due or payable or supposed to be due etc. for or on account of any service done or supposed to be done by any such officer etc. in the King's army or other military service, or the name of any officer, under officer, clerk or servant of the Commissioners of Chelsea Hospital, or of any officer or person in any way concerned in the paying or ordering, directing or causing the payment of the said pension etc. (*s*);

(2) Forges etc. any letter of attorney, bill, ticket, order, certificate, voucher, receipt, will, or any other power, instrument, warrant, document, or authority whatsoever relating to or anywise concerning the payment or obtaining or claiming any such pension etc. (*t*);

(3) Utters or publishes as true or knowingly and willingly assists in uttering etc. any such letter of attorney etc. with intent to obtain the payment of any such pension etc. or with intent to defraud any person (*a*).

The punishment for these offences is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years (*b*).

Forging minutes etc. relating to payment of pension.

1470. Every person is by statute (*c*) guilty of felony who:—

(1) Forges, counterfeits, or alters, or causes or procures to be forged etc., or knowingly and willingly assists in forging etc. any minute, copy of minute, assignment of pension, superannuation, or other allowance granted under the Pensions Act, 1839 (*c*), or any order, certificate, receipt, document, or authority, whatsoever, relating to the payment of any such pension etc. (*d*);

(2) Utters or publishes as true or knowingly etc. assists in

50—53 of the Forgery Act, 1861 (24 & 25 Vict. c. 98), are incorporated with this Act (*ibid.*, s. 7).

(*r*) *Ibid.*, s. 6. These offences are not triable at quarter sessions.

(*s*) Chelsea and Kilmainham Hospitals Act, 1826 (7 Geo. 4, c. 16), s. 38; Army Prize Money Act, 1832 (2 & 3 Will. 4, c. 53), s. 49. It is not necessary that the pension etc. should be actually existing (*R.* v. *Pringle* (1840), 2 Mood. C. C. 127).

(*t*) *Ibid.*

(*a*) *Ibid.*

(*b*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*c*) 2 & 3 Vict. c. 51, s. 9.

(*d*) *Ibid.*, s. 9.

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uttering etc. with knowledge that it is forged etc. any such minute etc., or the name of any pensioner, justice of the peace, guardian, parish or other officer, or any other person authorised or supposed or purporting to be authorised to sign any such minute etc., with intent to obtain or enable any other person to obtain the payment of any such pension etc. (*e*).

The punishment for these offences is penal servitude for not more than seven or less than three years, or imprisonment with or without hard labour for not more than two years (*f*).

Forging seaman's pension papers.

1471. Every person is by statute (*g*) guilty of a misdemeanour who, for the purpose of obtaining either for himself or for another any pension, payment, or relief from the Merchant Seamen's Fund,

(1) Fraudulently forges or alters, or procures to be forged etc., or assists in forging etc. any certificate or other document purporting to show or assist in showing a right to any such pension etc. (*g*);

(2) Fraudulently makes use of any forged etc. certificate etc. or any certificate etc. not belonging to him (*h*).

The punishment for these offences on indictment is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than two years, or, on summary conviction, imprisonment with or without hard labour for not more than six months (*i*).

(x.) *Documents under Merchant Shipping Act*, 1894.

Forging documents mentioned in the Merchant Shipping Act, 1894.

1472. Every person is by statute (*k*) guilty of a felony who :—

(1) Forges, or fraudulently alters, or assists in forging etc. or procures to be forged etc. any of the following documents referred to in the Merchant Shipping Act, 1894 (*k*): register code (*l*), builder's certificate (*m*), surveyor's certificate (*n*), certificate of registry (*o*), declaration (*p*), bill of sale (*q*), instrument of mortgage (*r*), or certificate of mortgage or sale (*s*), or any entry or endorsement required by Part I. of that Act (*t*) to be made in or on any of these documents (*u*);

(2) Forges the seal, stamp, or signature of any document to which section 695 of the Merchant Shipping Act, 1894 (*x*), applies;

(*e*) Pensions Act, 1839 (2 & 3 Vict. c. 51), s. 9.
(*f*) *Ibid.* Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 8; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.
(*g*) Seamen's Fund Winding-up Act, 1851 (14 & 15 Vict. c. 102), s. 55.
(*h*) *Ibid.*
(*i*) *Ibid.* Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.
(*k*) 57 & 58 Vict. c. 60.
(*l*) *Ibid.*, s. 5.
(*m*) *Ibid.*, s. 10.
(*n*) *Ibid.*, s. 6.
(*o*) *Ibid.*, s. 14.
(*p*) *Ibid.*, ss. 9, 25, 27, 38.
(*q*) *Ibid.*, s. 24.
(*r*) *Ibid.*, s. 31.
(*s*) *Ibid.*, s. 39.
(*t*) *Ibid.*, ss. 19, 49.
(*u*) *Ibid.*, ss. 50, 66.
(*x*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 66 and 695 (4)

(3) Tenders in evidence any such document with a false etc. seal etc., with knowledge that it is false etc. (*a*).

The punishment for these offences is penal servitude for not more than seven nor less than three years, and imprisonment for not more than two years with or without hard labour (*b*).

Forging document relating to deposit in seamen's savings bank.

1473. Every person is by statute (*c*) guilty of a misdemeanour who for the purpose of obtaining either for himself or for any other person any money deposited in a seamen's savings bank or any interest thereon:—

(1) Forges or fraudulently alters, assists in forging etc., or procures to be forged etc. any document purporting to show or assist in showing any right to any such money etc. (*c*);

(2) Makes use of any document which has been so forged etc. (*d*);

(3) For the purpose of obtaining either for himself or for any other person any property (*e*) of any deceased seaman or apprentice to the sea service, forges etc. or assists in forging etc., or procures to be forged etc. any document purporting to show etc. any right to such property (*f*);

(4) Makes use of any document so forged etc. (*g*).

The punishment for these offences on indictment is penal servitude for not more than five nor less than three years, or imprisonment, with or without hard labour, for not more than two years, or on summary conviction, imprisonment, with or without hard labour, for not more than six months (*h*).

Forging etc. certificate of discharge under Merchant Shipping Act, 1894.

1474. Every person is by statute (*i*) guilty of a misdemeanour who

(1) Forges or fraudulently alters any certificate of discharge or report of character, or copy of a report of character given under the Merchant Shipping Act, 1894 (*i*);

(2) Assists in committing or procures to be committed the last-mentioned offence (*k*);

(3) Fraudulently uses any certificate of discharge etc. which is forged etc. or does not belong to him (*l*);

(4) Fraudulently alters, makes any false entry in or delivers a false copy of an agreement with the crew of a British ship under the Act (*m*);

(5) Forges etc. or assists in forging etc. any certificate of competency or an official copy of such certificate (*n*);

Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 8; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. These offences are not triable at quarter sessions.

(*a*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 50, 66.

(*b*) *Ibid.*, ss. 66 and 695 (4); Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 8; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. These offences are not triable at quarter sessions.

(*c*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 154.

(*d*) *Ibid.*

(*e*) As to definition of property, see *ibid.*, s. 676.

(*f*) *Ibid.*, s. 180.

(*g*) *Ibid.*

(*h*) *Ibid.*, ss. 154 and 180; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. These offences are not triable at quarter sessions.

(*i*) 57 & 58 Vict. c. 60; see s. 130 (b). See *R.* v. *Wilson* (1858), Dears. & B. 558.

(*k*) *Ibid.*, s. 130 (c).

(*l*) *Ibid.*, s. 130 (d).

(*m*) *Ibid.*, s. 121.

(*n*) *Ibid.*, s. 104 (a).

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(6) Fraudulently uses a certificate etc. which has been forged etc., cancelled, or suspended, or to which he is not entitled (*o*);

(7) Forges, assists in forging, procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any declaration of survey or passenger steamer's certificate, or anything contained in or any signature to such declaration (*p*);

(8) In any proceedings under Part IX. of the Merchant Shipping Act, 1894 (*q*), in relation to salvage by the King's ships, forges etc. any document (*r*);

(9) In any such proceedings puts off or makes use of any forged etc. document knowing that it is forged etc. (*r*);

(10) Being an officer to whose custody an original document is intrusted, wilfully certifies any document as being a true copy or extract knowing the same not to be a true copy or extract (*s*);

(11) Forges or fraudulently alters or assists in forging etc. any document in support of an application for wages under s. 197 of the Merchant Shipping Act, 1894 (*t*);

(12) Presents or makes use of any document so forged etc.;

(13) Forges, assists in forging, or procures to be forged, the seal or any other distinguishing mark of the Board of Trade or any form issued by the Board of Trade under the Act (*a*);

(14) Fraudulently alters any such form (*a*).

For these offences the punishment on indictment is imprisonment, with or without hard labour, for not more than two years, except in the case of the offence No. 10, in respect of which the maximum punishment is imprisonment for eighteen months (*b*).

Forging signature of sea-fishery officer.

1475. Everyone is by statute (*c*) guilty of a misdemeanour who:—

(1) Forges the signature of a sea-fishery officer to a document drawn up in pursuance of the first schedule to the Sea Fisheries Act, 1883;

(2) Makes use of such signature knowing that it is forged etc.

The punishment for this offence is imprisonment, with or without hard labour, for not more than two years on indictment, and for not more than three months on summary conviction (*d*).

(xi.) *Transfers of Stock etc.*

Forging transfer of stock etc.

1476. Everyone is by statute (*e*) guilty of felony who with intent to defraud:—

(1) Forges or alters or utters etc. with knowledge that it is

(*o*) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 104 (c).
(*p*) *Ibid.*, s. 282.
(*q*) 57 & 58 Vict. c. 60.
(*r*) *Ibid.*, s. 564; and see p. 560, *ante*.
(*s*) *Ibid.*, s. 695 (3).
(*t*) *Ibid.*, s. 197 (8).
(*a*) *Ibid.*, s. 722.
(*b*) *Ibid.*, ss. 130, 104, 282, 564, 680, 695 (3). These offences are not triable at quarter sessions. On summary conviction, the punishment for any such offence is imprisonment, with or without hard labour, for not more than six months or a fine not exceeding £100 (*ibid.*).
(*c*) 46 & 47 Vict. c. 22; see *ibid.*, s. 17.
(*d*) *Ibid.*, s. 17 (4). This offence is not triable at quarter sessions.
(*e*) Forgery Act, 1861 (24 & 25 Vict. c. 98), ss. 2, 5, 7; Forgery Act, 1870 (33 & 34 Vict. c. 58), ss. 3—6.

forged etc. any transfer of any share or interest in any stock, annuity, or other public fund transferable at the Bank of England or Ireland, or in the capital stock of any body corporate, company, or society established by charter or by, under, or in virtue of any Act of Parliament (*f*);

(2) Forges etc. or alters etc. with knowledge that it is forged etc. any power of attorney or other authority to transfer any share etc. of or in any such stock etc. or to receive any dividend or money payable in respect of any such share or interest (*g*);

(3) Demands or endeavours to have any such share or interest transferred or to receive any dividend or money payable in respect thereof by virtue of any such forged or altered power of attorney etc. with knowledge that it is forged etc. (*h*);

(4) Forges etc. or utters etc. with knowledge that it is forged etc. any stock certificate or coupon or document purporting to be a certificate etc. issued in pursuance of Part V. of the National Debt Act, 1870 (*i*), or of any former Act or any India or colonial stock certificate etc., or any document purporting to be such certificate etc., or any bond, debenture or security commonly called an East India bond, or any bond etc. issued or made under the authority of any Act passed or to be passed relating to the East Indies, or any indorsement on or assignment of such bond etc. (*k*);

(5) Demands or endeavours to obtain or receive any share or interest of or in any stock as defined by the National Debt Act, 1870 (*i*), or of or in India or colonial stock, or to receive any dividend or money payable in respect thereof by virtue of any such forged etc. certificate etc. with knowledge that it is forged etc. (*l*);

(6) Forges etc. or utters etc. with knowledge that it is forged etc. any certificate or duplicate certificate required by Part VI. of the National Debt Act, 1870 (*i*), or by any former like Act (*m*);

(7) Wilfully makes any false entry in or wilfully alters any word or figure in any of the books of accounts kept by the Bank of England or of Ireland in which the accounts of the owners of any stock, annuities or other public funds transferable at such bank are entered and kept (*n*);

(8) Wilfully falsifies any of the accounts of any such owner in any of such books (*o*);

(*f*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 2. "Capital stock of a body corporate" includes consolidated stock created under the Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102) (see *ibid.*, s. 19; see now Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40), debenture stock under the Local Loans Act, 1875 (38 & 39 Vict. c. 83) (see *ibid.*), and colonial stock issued under the Colonial Stock Acts, 1877-1900 (40 & 41 Vict. c. 59; 55 & 56 Vict. c. 35; 63 & 64 Vict. c. 62) (see Colonial Stock Act, 1877 (40 & 41 Vict. c. 59), s. 21).

(*g*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 2.

(*h*) *Ibid.*

(*i*) 33 & 34 Vict. c. 71.

(*k*) Forgery Act, 1870 (33 & 34 Vict. c. 58), s. 3; Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 7; India Stock Certificate Act, 1863 (26 & 27 Vict. c. 73), s. 13; Colonial Stock Act, 1877 (40 & 41 Vict. c. 59), s. 21.

(*l*) *Ibid.*

(*m*) Forgery Act, 1870 (33 & 34 Vict. c. 58), s. 6.

(*n*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 5.

(*o*) *Ibid.*, s. 5.

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(9) Wilfully makes any transfer of any share etc. of or in any such stock etc. in the name of any person not being the true and lawful owner of such shares etc. (*p*);

(10) Forges etc. or utters etc. with knowledge that it is forged etc. any share warrant or coupon, or document purporting to be a share warrant etc. issued in pursuance of the Companies (Consolidation) Act, 1908 (*q*);

(11) By means of any such forged etc. share warrant etc. demands or endeavours to obtain or receive any share or interest in any company under the last-mentioned Act, or to receive any dividend or money payable in respect thereof by virtue of any such forged etc. share warrant etc. with knowledge that the same is forged etc. (*r*).

The punishment for these offences is penal servitude for life or for not less than three years, or imprisonment, with or without hard labour, for not more than two years (*s*).

Engraving stock certificate etc.

1477. Everyone is by statute guilty of felony (*t*) who without lawful authority or excuse (*u*):—

(1) Engraves or makes on any plate, wood, stone, or other material any stock certificate or coupon purporting to be a stock certificate or coupon issued in pursuance of Part V. of the National Debt Act,

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(*p*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 5.

(*q*) 8 Edw. 7, c. 69; see s. 38.

(*r*) *Ibid.*, s. 38.

(*s*) Forgery Act, 1861 (24 & 25 Vict. c. 98), ss. 2, 5, 7; Forgery Act, 1870 (33 & 34 Vict. c. 58), ss. 3, 6; India Stock Certificate Act, 1863 (26 & 27 Vict. c. 73), s. 13; Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102), s. 19; Local Loans Act, 1875 (38 & 39 Vict. c. 83); Colonial Stock Act, 1877 (40 & 41 Vict. c. 59), s. 21; Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 38; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. These offences are not triable at quarter sessions. The forging or altering of a certificate required by the India Stock Transfer Act, 1862 (25 & 26 Vict. c. 7), or the uttering etc. such certificate with knowledge that it is forged etc., or the forging of any name, handwriting, or signature, purporting to be the name etc. of a witness attesting the execution of any power of attorney, or other authority to transfer any share or interest of or in any stock to which ss. 2 and 3 of the Forgery Act, 1861 (24 & 25 Vict. c. 98), apply, or to utter etc. such name etc. with knowledge that it is forged, is a felony punishable with penal servitude for not more than seven or less than three years, or imprisonment, with or without hard labour, for not more than two years (India Stock Transfer Act, 1862 (25 & 26 Vict. c. 7), s. 14; Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 4). To make a false entry in or to alter any of the books for transfer of consolidated stock created by the Metropolitan Board of Works or by the London County Council, or to falsify any of such books or to make any transfer of such stock in the name of any person who is not the true owner, is a felony punishable in the same way as the last-mentioned felonies, except that the maximum period of penal servitude is fourteen years (Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102), s. 20; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1). The last-named offences are not triable at quarter sessions. As to the forgery of debentures, see p. 733, *ante*, and the fraudulent personation of the owners of stock etc. see p. 706, *ante*.

(*t*) Forgery Act, 1870 (33 & 34 Vict. c. 58), s. 5; Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 38.

(*u*) The onus of proof of such authority or excuse in each case lies on the party accused (Forgery Act, 1870 (33 & 34 Vict. c. 58), s. 5; Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 38).

1870 (*a*), or to be such a stock certificate or coupon in blank, or to be a part of such a stock certificate or coupon, or share warrant or coupon as aforesaid (*b*);

(2) Uses any such plate etc. for the making or printing of any such stock certificate etc. (*c*);

(3) Knowingly has in his custody or possession any such plate etc. (*d*);

(4) Knowingly utters etc., or has in his custody or possession any paper on which any such blank stock certificate or coupon, or part of any such stock certificate or coupon as aforesaid, is made or printed (*e*);

(5) Engraves or makes on any plate etc. any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company in pursuance of the Companies (Consolidation) Act, 1908 (*f*), or to be a blank share warrant or coupon so issued or made, or to be part of such share warrant or coupon (*g*);

(6) Uses any such plates etc. for making or printing any such share warrant etc. (*h*);

(7) Knowingly has in his custody or possession any such plate etc.

The punishment for these offences is penal servitude for not more than fourteen years nor less than three years, or imprisonment, with or without hard labour, for not more than two years (*i*).

Fraudulently making out dividend warrant etc

1478. Every person is by statute guilty of felony who with intent to defraud:—

(1) Being a clerk, officer, or servant of, or other person employed or intrusted by, the Bank of England or of Ireland, knowingly makes out or delivers any dividend warrant, or warrant for payment of any annuity, interest, or money payable at the Bank of England or of Ireland for a greater or less amount than the person on whose behalf such warrant shall be made out is entitled to (*k*);

(2) Being a clerk etc. employed by the London County Council or the person or body corporate who keeps the books of transfer of consolidated stock created by the Metropolitan Board of Works or the London County Council, makes out or delivers any stock certificate, dividend warrant, or document for the payment of money with relation to such stock for a greater or less amount than the person on whose behalf such certificate is made out is entitled to (*l*).

(*a*) 33 & 34 Vict. c. 71.

(*b*) Forgery Act, 1870 (33 & 34 Vict. c. 58), s. 5; Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 38.

(*c*) *Ibid.*

(*d*) *Ibid.*

(*e*) *Ibid.*

(*f*) 8 Edw. 7, c. 69.

(*g*) Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 38 (2).

(*h*) *Ibid.*

(*i*) Forgery Act, 1870 (33 & 34 Vict. c. 58), s. 5; Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 38 (2); Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. These offences are not triable at quarter sessions.

(*k*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 6.

(*l*) Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102), s. 21; Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 40.

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The punishment for any such offence is penal servitude for seven years or for any period not less than three years, or imprisonment for any term not exceeding two years, with or without hard labour (*m*).

Inserting false entry of number of shares in banking company in any contract for sale of shares etc.

1479. Every person is by statute (*n*) guilty of a misdemeanour who in any contract, agreement, or token for the sale or transfer of any share or stock in any joint stock banking company in the United Kingdom, constituted under or regulated by the provisions of any Act of Parliament, royal charter, or letters patent, issuing shares or stock transferable by any deed or written instrument, wilfully inserts any false entry of the number of such shares or any name other than that of the person in whose name such shares etc. stand in the register or book of such company.

The punishment for this offence is imprisonment without hard labour, or fine, or both (*o*).

(xii.) *Hall Marks on Plate.*

Forging dies for stamping gold or silver plate etc.

1480. Every person is by statute (*p*) guilty of felony who:—

(1) Forges or counterfeits or utters, knowing it to be forged etc., any die or other instrument or part of such die etc. provided and used by the Goldsmiths' Company in London, or the Goldsmiths' Companies in York, Exeter, Bristol, Chester, Norwich, or Newcastle-upon-Tyne, or the companies of guardians of the standard of wrought-plate in Sheffield or Birmingham for the marking or stamping of gold or silver wares (*p*);

(2) Marks with such forged etc. die etc. any ware of gold or silver or of base metal (*p*);

(3) Utters any such ware of gold or silver or of base metal marked with such forged etc. die etc. with knowledge that it was so marked (*p*);

(4) Forges etc. or by any means produces an imitation of or utters, knowing that it is forged etc., any mark or part of any mark of any such die etc. upon any ware of gold or silver or base metal (*q*);

(5) Transposes or removes or utters, knowing it is transposed etc., any mark of any such die etc. from any ware of gold or silver to any ware of base metal (*q*);

(6) Has in his possession without lawful excuse any such forged etc. die etc. or any ware of gold etc. having the mark of any such forged etc. die, or any such forged etc. mark or imitation of a mark or having a mark which has been transposed etc. (*q*);

(7) Cuts or severs from any ware of gold etc. any mark or part of mark of any such die with intent that such mark etc.

(*m*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 6; Metropolitan Board of Works (Loans) Act, 1869 (32 & 33 Vict. c. 102), s. 21; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*n*) Banking Companies' (Shares) Act, 1867 (30 & 31 Vict. c. 29), s. 1. The Act does not extend to the Bank of England or of Ireland.

(*o*) *Ibid.* This offence is not triable at quarter sessions.

(*p*) Gold and Silver Wares Act, 1844 (7 & 8 Vict. c. 22), s. 2.

(*q*) *Ibid.*

may be placed upon or joined or affixed to any other ware of gold or silver or any ware of base metal (*r*);

(8) Places upon or joins or affixes to any ware of gold or silver or base metal any mark of any such die etc. cut or severed from any ware of gold or silver (*r*);

(9) With intent to defraud the King or any of the before-mentioned companies, uses any genuine die etc., or counsels, aids, or abets such offence (*r*).

The punishment for these offences is penal servitude for not more than fourteen years nor less than three years, or imprisonment, with or without hard labour, for not more than two years (*s*).

(xiii.) *Trade Marks etc.*

Forging trade marks etc.

1481. Every person is by statute (*t*) guilty of a misdemeanour who:—

(1) Forges any trade mark (*t*);

(2) Falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive (*t*);

(3) Makes any die, block, machine, or other instrument for the purpose of forging or of being used for forging a trade mark (*t*);

(4) Applies any false trade description to goods (*a*);

(5) Disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark (*b*);

(6) Causes any of the things above mentioned to be done (*c*);

(7) Sells or exposes for sale or has in his possession for sale or for any purpose of trade or manufacture any goods or things to which any false trade mark or false trade description is applied or to which any trade marks or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, unless the defendant proves that having taken all reasonable precautions against

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(*r*) Gold and Silver Wares Act, 1844 (7 & 8 Vict. c. 22), s. 2.

(*s*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. Except as regards the last-mentioned offence, an intent to defraud is not a necessary ingredient of the offence (*R.* v. *Spittle* (1902), 18 T. L. R. 436; see *R.* v. *Ogden* (1834), 6 C. & P. 631). There are similar provisions in the Plate Assay (Sheffield and Birmingham) Act, 1772 (13 Geo. 3, c. 52), s. 14. These offences are not triable at quarter sessions.

(*t*) Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28) s. 2. As to meaning of trade mark, see title TRADE MARKS AND DESIGNS.

(*a*) Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2 (d): "Trade description" means any description, statement, or other indication, direct or indirect, as to (a) the number, quantity, measure, gauge, or weight of any goods; (b) the place or county where any goods were made or produced; (c) mode of manufacturing or producing any goods; (*d*) the material of which the goods are composed; (e) any goods, being the subject of an existing patent, privilege, or copyright, and the use of any figure or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters. "False trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, when that alteration makes the description false in a material respect; the fact that a trade description is a trade mark or a part of a trade mark does not prevent such trade mark being a false description (*ibid.*, s. 3).

(*b*) *Ibid.*, s. 2 (e).

(*c*) *Ibid.*, s. 2 (f). In all the above-mentioned cases the onus of disproving intent to defraud is on the defendant (see *ibid.*, s. 2).

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committing an offence against the Merchandise Marks Act, 1887 (*d*), he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description, and gave all the information in his power with regard to the persons from whom he obtained such goods etc., or that otherwise he acted innocently (*e*).

The punishment for these offences on indictment is imprisonment, with or without hard labour, for not more than two years, or fine, or both (*f*).

(xiv.) *Miscellaneous Instruments.*

Forging certificate of valuation under Slave Trade Act, 1824. etc.

1482. Every person is by statute guilty of felony who :—

(1) Wilfully and fraudulently forges or counterfeits any certificate, certificate of valuation, sentence, or decree of condemnation or restitution, copy of such sentence etc., or any receipt required by the Slave Trade Act, 1824 (*g*), or any part of such certificate etc. (*h*);

(2) Knowingly etc. utters or publishes such certificate etc. with knowledge that it is forged etc. with intent to defraud the King or any other person (*h*).

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment, with or without hard labour, for not more than two years (*i*).

Forging warranty for the purposes of the Sale of Food and Drugs Act, 1875.

1483. Every person is guilty of a misdemeanour who forges, or for the purposes of the Sale of Food and Drugs Act, 1875 (*k*), utters, knowing it to be forged, any certificate or any writing purporting to contain a warranty (*l*).

The punishment for this offence is imprisonment with or without hard labour for not more than two years (*m*).

Forging licence under London Hackney Carriage Act, 1843, etc.

1484. Every person is by statute (*n*) guilty of a misdemeanour who :—

(1) Forges or counterfeits, or causes or procures to be forged etc. any licence or ticket directed by the London Hackney Carriages Act, 1843 (*n*), to be provided for the driver of a hackney carriage or for the driver or conductor of a metropolitan stage carriage (*o*) ;

(*d*) 50 & 51 Vict. c. 28.

(*e*) *Ibid.*, s. 2 (2).

(*f*) *Ibid.*, s. 2 (3). These offences are triable at quarter sessions. On summary conviction the punishment is imprisonment, with or without hard labour, for not more than four months for a first offence and six months for a second offence, or a fine not exceeding £20 for a first offence or £50 for a second offence. In any case the defendant forfeits to the King every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed. See also p. 566, *ante*, and title TRADE MARKS AND DESIGNS.

(*g*) 5 Geo. 4, c. 113.

(*h*) *Ibid.*, s. 10.

(*i*) *Ibid.* ; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. These offences are not triable at quarter sessions.

(*k*) 38 & 39 Vict. c. 63.

(*l*) *Ibid.*, s. 27.

(*m*) *Ibid.* This offence is not triable at quarter sessions. See also title FOOD AND DRUGS.

(*n*) 6 & 7 Vict. c. 86.

(*o*) *Ibid.*, s. 20.

(2) Sells or exchanges or exposes to sale or utters any such forged etc. licence etc. (*p*);

(3) Knowingly and without lawful excuse has or is possessed of such forged etc. licence or ticket knowing it is forged etc. (*q*);

(4) Knowingly and wilfully aids and abets any person in committing any of these offences (*r*).

The punishment for this offence is imprisonment with or without hard labour, or fine, or both (*s*).

Forging licence under Explosives Act, 1875, etc.

1485. Every person is by statute (*t*) guilty of a misdemeanour who:—

(1) Forges or counterfeits any licence, certificate, document, or plan granted or required in pursuance or for the purposes of the Explosives Act, 1875 (*t*);

(2) Gives or signs any such document or plan which is to his knowledge false in any material particular (*a*);

(3) Wilfully makes use of any such forged counterfeit or false licence etc. (*a*).

The punishment for these offences is imprisonment, with or without hard labour, for not more than two years on indictment, and on summary conviction for not more than one month (*b*).

Forging statement under Coal Mines Regulation Act, 1897, etc.

1486. Every person is by statute (*c*) guilty of a misdemeanour who:—

(1) Forges or counterfeits or knowingly makes any false statement in any certificate of competency under the Coal Mines Regulation Act, 1887 (*c*), or any certificate of service granted under that Act or any Act repealed by that Act (*d*), or any official copy of any such certificate (*e*);

(2) Knowingly utters or uses any such certificate or copy which has been forged or counterfeited or contains any false statement (*f*);

(3) For the purpose of obtaining for himself or any other person employment as a certificated manager or under-manager, or the grant, renewal, or restoration of any certificate under the Act, or a copy thereof, makes or gives any declaration, representation, statement, or evidence which is false in any particular, or knowingly utters, produces, or makes use of any such declaration etc. or any document containing the same (*g*).

(*p*) London Hackney Carriages Act, 1843 (6 & 7 Vict. c. 86), s. 20.
(*q*) *Ibid.* The onus of proving the lawful excuse is on the defendant (*ibid.*).
(*r*) *Ibid.*
(*s*) *Ibid.* There is no limit as to the term of imprisonment (*ibid.*; see p. 410, *ante*). These offences are not triable at quarter sessions. Forging a mark identifying a motor car or a licence under the Motor Car Act, 1903 (3 Edw. 7, c. 36), is an offence punishable on summary conviction (see *ibid.*, ss. 5, 11). See also title STREET TRAFFIC.
(*t*) 38 Vict. c. 17; *ibid.*, s. 81.
(*a*) *Ibid.*
(*b*) *Ibid.*, ss. 81, 91. This offence is not triable at quarter sessions.
(*c*) 50 & 51 Vict. c. 58.
(*d*) See *ibid.*, schedule, 4.
(*e*) *Ibid.*, s. 32 (1).
(*f*) *Ibid.*, s. 32 (2).
(*g*) *Ibid.*, s. 32 (3).

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The punishment for these offences is imprisonment for not more than two years, with or without hard labour (*h*).

Forging nomination paper under Ballot Act, 1872.

1487. Everyone is by statute (*i*) guilty of a misdemeanour who forges or fraudulently defaces or destroys any nomination paper used for the purpose of the Ballot Act, 1872 (*i*), or knowingly delivers such forged paper to the returning officer, or forges or fraudulently defaces or destroys any ballot paper or the official mark on any ballot paper used for the purpose of the same Act (*k*).

The punishment for such offence, if the offender is a returning officer or officer or clerk in attendance at a polling station, is imprisonment for not more than two years, with or without hard labour; or if the offender is any other person, imprisonment for not more than six months, with or without hard labour (*l*).

Forging nomination papers under Municipal Corporations Act, 1882.

1488. Everyone is by statute (*m*) guilty of a misdemeanour who forges or fraudulently defaces or destroys any nomination paper used for the purpose of the Municipal Corporations Act, 1882 (*m*), or knowingly delivers such forged paper to the town clerk, or attempts to commit any such offence (*n*).

The punishment for any such offence is imprisonment for any term not exceeding six months, with or without hard labour (*o*).

Forging telegrams.

1489. Everyone is by statute (*p*) guilty of a misdemeanour who forges, or wilfully and without due authority alters, a telegram, or utters a telegram so forged or altered, or transmits by telegraph as a telegram, or utters as a telegram a message or communication which he knows to be not a telegram.

The punishment for such offence on conviction on indictment is imprisonment for not more than twelve months, with or without hard labour (*q*).

Demanding money etc. under forged instrument.

1490. Every person is by statute guilty of a felony who with intent to defraud demands, receives, or obtains, or causes or procures to be

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(*h*) Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58), s. 32. These offences are not triable at quarter sessions. See also title MINES, MINERALS, AND QUARRIES.

(*i*) 35 & 36 Vict. c. 33.

(*k*) *Ibid.*, s. 3.

(*l*) *Ibid.* This offence is not triable at quarter sessions.

(*m*) 45 & 46 Vict. c. 50.

(*n*) *Ibid.*, s. 74.

(*o*) *Ibid.* This offence is not triable at quarter sessions. See also title ELECTIONS.

(*p*) Post Office (Protection) Act, 1884 (47 & 48 Vict. c. 76), s. 11. This offence may be committed without intent to defraud (*ibid.*); "telegram" means a "written or printed message or communication, sent to or delivered at a post office, or the office of a telegraph company, for transmission by telegraph, or delivered by the Post Office or a telegraph company as a message or communication transmitted by telegraph" (s. 11). A telegram has also been held to be an "instrument" within the meaning of the Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 38, which makes it an offence to obtain money by means of a forged instrument (*R.* v. *Riley*, [1896] 1 Q. B. 309, C. C. R.).

(*q*) *Ibid.*, s. 11. This offence is not triable at quarter sessions. On summary conviction the punishment is a fine of not more than £10 (*ibid.*). See also titles TELEGRAMS AND TELEPHONES.

delivered or paid to any person, or endeavours to receive or obtain or to cause or procure to be delivered or paid to any person any chattel, money, security for money, or other property whatsoever under, upon, or by virtue of any forged or altered instrument with knowledge that it is forged etc., or under etc. any probate or letters of administration with knowledge that the will etc. on which probate or letters of administration have been obtained is forged etc., or that such probate etc. has been obtained by any false oath, affirmation, or felony (*r*).

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment, with or without hard labour, for not more than two years (*s*).

SUB-SECT. 3.—*Indictment, Evidence and Punishment.*

Indictment.

1491. In an indictment for forging, altering, offering, uttering, disposing, or putting off any instrument, the instrument may be described by any name or designation by which it is usually known or by the purport thereof without setting out any copy or facsimile or otherwise describing it or its value.

A similar description is sufficient in an indictment for engraving or making the whole or any part of any instrument, matter or thing, or for using or having unlawful custody or possession of any plate or other material upon which the whole or any part of any instrument etc. has been made etc. (*t*).

It is usual in an indictment for forgery to allege the offence in one count as a forgery and in a second count as an uttering (*a*).

Intent to defraud.

1492. In an indictment for forging, uttering etc., any instrument, when it is necessary to allege an intent to defraud, it is sufficient to allege that the person accused did the act charged with intent to

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(*r*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 38; see *R.* v. *Riley*, [1896] 1 Q. B. 309, C. C. R., in which a "telegram" was held to be an instrument within the meaning of the section.

(*s*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*t*) Forgery Act, 1861 (24 & 25 Vict. c. 98), ss. 42, 43.

The necessity for setting out a copy of a forged instrument was first abolished by stat. (1832) 2 & 3 Will. 4, c. 123, s. 3, which was superseded by the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), ss. 5, 6 of which are reproduced in the Forgery Act, 1861 (24 & 25 Vict. c. 98), ss. 42, 43. It seems that the indictment even now must state what the instrument is (see *R.* v. *Wilcox* (1893), Russ. & Ry. 50; and see *R.* v. *Hunter* (1794), 2 Leach, 624; *R.* v. *Birkett* (1813), Russ. & Ry. 251; *R.* v. *Hunter* (1823), Russ. & Ry. 511.

(*a*) Most of the statutes which make uttering a separate offence describe the offence by the use of the words "offer, utter, dispose of and put off." An indictment for forgery may be in the following form:—"The jurors for our lord the King upon their oaths present that John Jones on the —— day of March in the year of Our Lord ——, feloniously did forge a certain bill of exchange with intent thereby then to defraud against the form of statute in that case made and provided. Second count: And the jurors aforesaid upon their oath aforesaid, do further present that the said John Jones afterwards to wit on the day and year aforesaid feloniously did offer, utter, dispose of and put off a certain forged bill of exchange with intent thereby to defraud, he the said John Jones at the time he so offered, uttered, disposed of and put off the said last-mentioned bill of exchange as aforesaid well knowing the same to be forged against the form etc."

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defraud without alleging an intent to defraud any particular person (*b*).

Evidence.

1493. On the trial of such an indictment it is therefore only necessary to prove a general intent to defraud; it is not necessary to prove an intent to defraud any particular person or that any particular person was defrauded. It is essential to prove that the defendant forged or altered the whole or part of the instrument in question or made some material addition to such instrument (*c*). Such proof is given by calling witnesses to show that the part which is forged is in the handwriting of the defendant; this may be shown by the admission of the defendant himself (*d*), or by the evidence of persons acquainted with his handwriting, either from having seen him write or from corresponding with him (*e*), or by the evidence of experts who are not acquainted with his handwriting but who by comparing the alleged forgery with other writing proved at the trial to be that of the defendant's can say that the alleged forgery is his work. Evidence must be given to show who was the person whose signature or writing is forged, and to show either that there is no such person (*f*) or, if there is such a person, that he did not write the alleged signature or writing (*g*).

It is not necessary to call the person whose signature or writing is forged, or to show that there was no authority to use his name; it is sufficient to prove that the alleged forgery was not in the handwriting of such person (*h*).

Production of forged document.

The forged document must, if it is possible, be produced at the trial. If the document is in the prisoner's possession, it may be obtained by means of a search warrant in cases in which a search warrant can be issued (*i*). If possession of a forged document has been traced to the defendant and the prosecution are unable to obtain possession of it, a notice to produce the document should be

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(*b*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 44. As to the law before the statute see *R.* v. *Powner* (1872), 12 Cox, C. C. 235. In an indictment under the Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 28, where the intent to defraud does not appear in the definition of the offence, it seems that the common law definition of forgery must be imported into the section and that an intent to defraud must be alleged.

(*c*) *Waldridge* v. *Kennison* (1794), 1 Esp. 143. See p. 249, note (*p*), *ante*.

(*d*) *Burr* v. *Harper* (1816), Holt (N. P.), 420; *Willman* v. *Worrall* (1838), 8 C. & P. 380; *Warner* v. *Anderson* (1839), 8 Scott, 384; *Lewis* v. *Sapio* (1827), Mood. & M. 39; *Gould* v. *Jones* (1762), 1 Wm. Bl. 384; *R.* v. *Slaney* (1832), 5 C. & P. 213.

(*e*) See Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s. 8; *R.* v. *Silverlock*, [1894] 2 Q. B. 766, C. C. R.; see *R.* v. *Williams* (1838), 8 C. & P. 434. It is for the judge to decide whether a person tendered as a witness is qualified as an expert (*R.* v. *Silverlock*, *supra*; *R.* v. *Wilbain* (1863), 9 Cox, C. C. 448; *R.* v. *Harvey* (1869), 11 Cox, C. C. 546).

(*f*) See *R.* v. *Backler* (1831), 5 C. & P. 118; *R.* v. *King* (1832), 5 C. & P. 123; *R.* v. *Brannan* (1834), 6 C. & P. 326.

(*g*) *R.* v. *Sponsonby* (1784), 1 Leach, 332; *R.* v. *Downes* (1789), 1 Leach, 334, n.

(*h*) *R.* v. *Hurley* (1843), 2 Mood. & R. 473.

(*i*) See Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 46. As to when search warrants may be issued, see p. 309, *ante*.

served on the defendant a reasonable time before the commencement of the sittings of the court at which he is tried, and, if such notice is duly served, and proof given of such service, the contents of the document can be proved by secondary evidence (*k*). If the document is proved to be lost (*l*), or if it is in the hands of a third person who, being served with a *subpœna duces tecum* refuses on the ground of privilege to produce it, secondary evidence of its contents may be given (*m*).

On an indictment for forging an instrument it is not necessary to prove any uttering (*n*).

Proof of uttering.

1494. The offence of uttering a forged instrument is distinct from but connected with the act of forgery (*o*). Most of the statutes relating to forgery contain the words "offer, utter, dispose of, and put off," and these words cover the cases where a forged instrument is shown or produced, although not "uttered" in the strict sense of the word (*a*).

(*k*) *R.* v. *Hunter* (1829), 4 C. & P. 128; *R.* v. *Haworth* (1830), 4 C. & P. 254; *R.* v. *Fitzsimons* (1870), 18 W. R. 763, C. C. R. (Ir.); see p. 391, *ante*.

(*l*) *R.* v. *Hall* (1872), 12 Cox, C. C. 159.

(*m*) See p. 391, *ante*.

(*n*) See *R.* v. *Crooke* (1731), 2 Stra. 901; *R.* v. *Goate* (1700), 1 Ld. Raym. 737; *R.* v. *Holden* (1809), Russ. & Ry. 154; *R.* v. *Mazagora* (1815), Russ. & Ry. 291; *R.* v. *Hoatson* (1847), 2 Car. & Kir. 777; *R.* v. *Nash* (1852), 2 Den. 493; *R.* v. *Crowther* (1832), 5 C. & P. 316. *Quære* whether it is not necessary that there must be a possibility of some person being defrauded by the forgery (*R.* v. *Marcus* (1846), 2 Car. & Kir. 356). If a person is actually defrauded as the necessary consequence of the defendant's act, that is sufficient evidence of the intent (*R.* v. *Trenfield* (1858), 1 F. & F. 43), even although the person defrauded swears that he believed that the defendant had no intent to defraud (*R.* v. *Sheppard* (1810), Russ. & Ry. 169). If A. B., knowing that a bill is forged, utters it to C. D. and means that C. D. should believe it to be genuine, the jury are bound to infer that A. B. did it with intent to defraud (*R.* v. *Hill* (1838), 2 Mood. C. C. 30), even though A. B.'s intention was to take up the bill and pay for it on maturity (*R.* v. *Cooke* (1838), 8 C. & P. 582; *R.* v. *Geach* (1840), 9 C. & P. 499), or even if A. B. had a legal claim against the person defrauded to an amount equal to that obtained by the forgery (*R.* v. *Wilson* (1847), 1 Den. 284). If a forged instrument is given by a defendant to his bankers, the fact that he has given guarantees to them to a larger amount than that of the instrument does not completely negative an intent to defraud, but the intent must be, notwithstanding such fact, left to the jury (*R.* v. *James* (1836), 7 C. & P. 553; and see *R.* v. *Cooke*, *supra*).

(*o*) 2 East, P. C. 973.

(*a*) To constitute an uttering the instrument must be parted with or tendered, or offered or used in some way to get money or credit upon it, *i.e.*, by means of it (*R.* v. *Ion* (1852), 2 Den. 475, at p. 492). The mere showing of a forged bank note by a person with the intent of raising a false idea of the person's wealth, or the leaving it with another person to take care of, has been held not to constitute an uttering (*R.* v. *Shukard* (1811), Russ. & Ry. 200). To hand over a forged instrument as a pledge is an uttering (*R.* v. *Birkett* (1805), Russ. & Ry. 86). A conditional uttering is just as much a crime as any other uttering (*R.* v. *Cooke* (1838), 8 C. & P. 582). If A. B., who owes money to C. D., on being pressed by C. D. for payment produces to C. D. a forged receipt for the sum, but refuses to part with the receipt, such a use of the receipt is either an offering or an uttering within the Forgery Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 66), s. 10 (which is reproduced in ss. 20 and 23 of the Forgery Act, 1861 (24 & 25 Vict. c. 98) (*R.* v. *Radford* (1844), 1 Den. 59). When proceedings were taken before justices against a pawnbroker to compel him to deliver goods which had been

SECT. 4. Forgery.

In the case of uttering, evidence must be given to show that the instrument was forged, but, as in the case of forgery, it is not necessary to show by whom it was forged.

The intent to defraud in the case of uttering is proved by evidence that the defendant uttered the forged document for the purpose of obtaining money or credit by means of it, and that at the time he so uttered it he knew that it was forged (*b*).

Knowledge that instrument was forged.

Proof must be given that at the time when the defendant uttered the forged instrument he knew that it was forged. This proof can be given by evidence that the defendant on other occasions uttered or had possession of other forged instruments (*c*).

Punishment for statutory forgery not included in the Forgery Act, 1861.

1495. Every person guilty of any forgery or offence connected therewith not included under the Forgery Act, 1861 (*d*), if made a felony by any Act in force at the date of the passing of that Act, and punishable before the Forgery Act, 1830 (*e*), with death, or any person aiding or abetting such offence, is punishable with penal servitude for life, or for any period not less than three years, or

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pledged with him, and the pawnbroker was defended by a solicitor, who, in his presence, produced and handed up to the justices a ticket and said that it was the ticket which had been returned on the delivery of the goods, it was held that this amounted to an uttering by the pawnbroker (*R.* v. *Fitchie* (1857), Dears. & B. 175). If an instrument is produced for some collateral purpose, and there is an intent to defraud, this amounts to an uttering, *e.g.*, where E. F., with the object of inducing G. H. to lend money to J. K. on the guarantee of E. F., produced to G. H. for inspection by him forged receipts for the rates in respect of his house, it was held that this was an uttering within the Forgery Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 66), s. 10. If a forged instrument is posted in England in a letter addressed to a person abroad, the posting of the letter is an uttering of the instrument in England (*R.* v. *Finkelstein* (1886), 16 Cox, C. C. 107). If a person who produces a bill for the purpose of raising money upon it makes false representations as to the circumstances, occupation etc. of the acceptor, this is evidence to justify a finding that the defendant uttered the name of the acceptor as the name of a fictitious person, although there was a person actually in existence and bearing the name of the acceptor (*R.* v. *Nisbett* (1853), 6 Cox, C. C. 320). If A. with fraudulent intent hands a forged instrument to B. in order that B. may raise money by means of it, if B. is an accomplice, A.'s act amounts to a disposing or putting away of the note; if B. is an innocent agent, A. is guilty of uttering (*R.* v. *Palmer* (1804), 1 Bos. & P. (N. R.) 96; *R.* v. *Giles* (1827), 1 Mood. C. C. 166); as to principals and accessories, see p. 247, *ante*.

(*b*) See *R.* v. *Hill* (1838), 2 Mood. C. C. 30.

(*c*) *R.* v. *Wylie* (1804), 1 Bos. & P. (N. R.) 92; *R.* v. *Hough* (1806), Russ. & Ry. 120; *R.* v. *Millard* (1813), Russ. & Ry. 245; *R.* v. *Ball* (1808), 1 Camp. 324; *R.* v. *Balls* (1836), 1 Mood. C. C. 470; *R.* v. *Green* (1852), 3 Car. & Kir. 209; *R.* v. *Forster* (1855), Dears. C. C. 456; *R.* v. *Salt* (1862), 3 F. & F. 834; *R.* v. *Colclough* (1882), 15 Cox, 92, C. C. R. (Tr.); this is the case even though such acts are the subject-matter of another indictment (*R.* v. *Kirkwood* (1830), 1 Lew. C. C. 103; *R.* v. *Martin* (1830), 1 Lew. C. C. 104; *R.* v. *Aston* (1838), 2 Russell on Crimes, 6th ed., 678; *R.* v. *Lewis* (1840), Archbold, Criminal Pleading, 8th ed., 365; but see *R.* v. *Hodgson* (1827), 1 Lew. C. C. 103; *R.* v. *Thomas Smith* (1827), 2 C. & P. 633; *R.* v. *Frederick Smith* (1831), 4 C. & P. 411; *Griffits* v. *Payne* (1839), 11 Ad. & El. 131). As to evidence of what was said by the defendant respecting such other forged instruments, see *R.* v. *Cooke* (1838), 8 C. & P. 586; *R.* v. *Brown* (1861), 2 F. & F. 559.

(*d*) 24 & 25 Vict. c. 98.

(*e*) 11 Geo. 4 & 1 Will. 4, c. 66.

with imprisonment for any term not exceeding two years with or without hard labour (*f*).

Summary conviction.

1496. There are a number of offences consisting of or arising out of forgery of particular instruments which are punishable on summary conviction only or for which penalties recoverable by action are imposed (*g*).

Foreign document.

1497. The forging, altering, or uttering of any instrument (*h*) in England or Ireland which has been made an offence by the Forgery Act, 1861 (*i*), is none the less an offence by reason that such instrument may have been made or purport to have been made in any foreign country, or expressed in any foreign language, and the person committing such offence and any person aiding, abetting, or counselling him are punishable as if the instrument had been made in England or Ireland (*k*).

Alternative punishments under Forgery Act, 1861.

1498. Where a felony has been committed under the Forgery Act, 1861 (*l*), the court may, in addition to the punishments authorised under that Act, require the offender to enter into his own recognisances and to find sureties, both or either, for keeping the peace (*m*).

Where a misdemeanour has been committed under the same Act, the court may, in addition to, or in lieu of, the punishments authorised thereunder impose a fine, and require the prisoner to enter into his own recognisances and find sureties, both or either, for keeping the peace (*n*).

(*f*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 48; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. These offences are not triable at quarter sessions.

(*g*) See Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), s. 32; Weights and Measures Act, 1904 (4 Edw. 7, c. 28), s. 10; Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), s. 168; Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 354; Borough Funds Act, 1903 (3 Edw. 7, c. 14), s. 5; Sale of Gas Act, 1859 (22 & 23 Vict. c. 66), s. 14; Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), ss. 7, 8; Manufactured Tobacco Act, 1863 (26 & 27 Vict. c. 7), s. 7; Army Act, 1881 (44 & 45 Vict. c. 58), s. 121; Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 27), s. 11; Pedlars Act, 1871 (34 & 35 Vict. c. 96), s. 12; Pedlars Act, 1881 (44 & 45 Vict. c. 45), s. 2; Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), ss. 44, 49; Chimney Sweepers Act, 1875 (38 & 39 Vict. c. 70), s. 19; Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 139; Seamen's and Soldiers' False Characters Act, 1906 (6 Edw. 7, c. 5), s. 1; Servants' Characters Act, 1792 (32 Geo. 3, c. 56), s. 4.

(*h*) Writing or matter whatsoever (Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 40).

(*i*) 24 & 25 Vict. c. 98.

(*k*) *Ibid.*, s. 40; as to accessories and venue, see p. 247, *ante*. A principal in the second degree or an accessory before the fact to a felony punishable under the Forgery Act, 1861 (24 & 25 Vict. c. 98), is punishable in the same manner as the principal in the first degree. An accessory after the fact is punishable with imprisonment not exceeding two years, with or without hard labour. A person aiding or abetting a misdemeanour under the same Act is punishable as a principal offender (*ibid.*, s. 49). As to principals and accessories in forgery, see *R.* v. *Soares* (1802), Russ. & Ry. 25; *R.* v. *Davis* (1806), Russ. & Ry. 113; *R.* v. *Badcock* (1813), Russ. & Ry. 249; *R.* v. *Morris* (1814), Russ. & Ry. 270; *R.* v. *Stewart* (1818), Russ. & Ry. 363; *R.* v. *Harris* (1836), 7 C. & P. 416.

(*l*) 24 & 25 Vict. c. 98.

(*m*) Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 51.

(*n*) *Ibid.* A justice of the peace has power to order search to be made for paper

SECT. 5.
Malicious Damage to Property.

SECT. 5.—*Malicious Damage to Property.*

SUB-SECT. 1.—*Malice.*

Malicious damage.

1499. Under the provisions of various statutes (*o*) the unlawful and malicious destruction or injury to property has been made criminal.

Malice.

A man is said to do an act "maliciously," when he intended to do the very unlawful act with which he is charged, or if such act is the necessary consequence of some other criminal act in which he was engaged, or where the act charged was the probable result of the act contemplated by the defendant, who either foresaw or ought to have foreseen the consequence and yet persisted in the unlawful act in which he was engaged (*p*).

An act done out of mischief, without any formal design of injuring anyone, but wantonly or recklessly, may be malicious (*q*). Malice may be inferred from the commission of a reckless or cruel act, though the doer of the act may not have had the intention of causing injury (*a*).

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or implements employed for the purpose of forgery, upon reasonable cause being shown for the belief that any person has unlawful possession thereof, and if such paper or implements are found, they may be destroyed or disposed of according to law (*ibid.*, s. 46).

(*o*) The most important and comprehensive of these statutes is the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97). The other statutes dealing with this subject are Dockyards etc. Protection Act, 1772 (12 Geo. 3, c. 24), s. 1; Railway Regulation Act, 1840 (3 & 4 Vict. c. 97), s. 13; Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 50; Drugging of Animals Act, 1876 (39 & 40 Vict. c. 13), s. 1; Fisheries (Dynamite) Act, 1877 (40 & 41 Vict. c. 65), s. 2; Monuments (Metropolis) Act, 1878 (41 & 42 Vict. c. 29), s. 4; Explosive Substances Act, 1883 (46 Vict. c. 3), ss. 2, 3; Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 666.

(*p*) Where a sailor entered a ship's spirit store for the purpose of stealing rum, and while tapping rum set fire to the spirit by a match which he held for the purpose of getting light, and the ship was destroyed by the fire, it was held that the sailor could not be convicted of unlawfully and maliciously setting fire to the ship (*R.* v. *Faulkner* (1877), 13 Cox, C. C. 550, C. C. R. (Ir.); *R.* v. *Pembliton* (1874), L. R. 2 C. C. R. 119); and where a prisoner threw a stone, intending to strike a person, and thereby broke a window, it was held that he could not be convicted of unlawfully and maliciously breaking the window (see *R.* v. *Latimer* (1886), 17 Q. B. D. 359, C. C. R.).

(*q*) *Re Borrowes*, [1900] 2 I. R. 593 (where some boys broke into a room out of curiosity, and did further damage in getting out, and it was held that they had acted wilfully and maliciously); *R.* v. *Upton* (1851), 5 Cox, C. C. 298 (where the defendants mischievously placed a stone between the points on a railway line to cause obstruction, and it was held that they were guilty of acting maliciously with intent to damage etc.). The placing on a railway line of an obstruction is "wilful" if it is done intentionally and with knowledge that the substance placed is likely to produce an obstruction, though not necessarily with a view to upsetting a train (*R.* v. *Holroyd* (1841), 2 Mood. & R. 339). In *R.* v. *Prestney* (1849), 3 Cox, C. C. 505, damage done to a field by a poacher's dog was held not to be malicious injury.

(*a*) *R.* v. *Welch* (1875), 13 Cox, C. C. 121, C. C. R. On a charge of poisoning horses evidence of previous administration of poison to the same horses is receivable to show intent (*R.* v. *Mogg* (1830), 4 C. & P. 364). If a poisonous substance is mixed with the horses' food and given to them with the intent to improve the appearance of the horses, this is not an administering with intent to kill or injure *ibid.*). As to evidence of malice or intent, see *R.* v. *Newboult*

It is not a necessary ingredient of any of the offences under the Malicious Damage Act, 1861 (*b*), that the act charged should have been committed from malice conceived against the owner of the property in respect of which the offence is committed (*c*). Malice in its legal import does not mean spite or ill-will, but the wilful doing of an illegal act (*d*).

Intent to injure.

1500. In a prosecution under the Act for an offence of which an intent to injure or defraud is a necessary ingredient, it is not necessary to allege or to prove an intent to injure or defraud any particular person; it is sufficient to allege and to prove an intent to injure or defraud (*e*).

Claim of right.

1501. A person cannot be convicted of the offence of doing malicious injury to property if he is acting in the exercise of a legal right or if he is *bonâ fide* acting under a supposed right (*f*). If a servant *bonâ fide* acts in obedience to a master who claims a right, the servant cannot be said to act maliciously, even if the master claims a right which he knows does not exist. The servant in a case of this kind can only be criminally liable if the master was acting maliciously and if the servant knew that the master was so acting (*g*). If the accused has done more damage than he can

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(1872), L. R. 1 C. C. R. 344; *R.* v. *Farrington* (1811), Russ. & Ry. 207; *R.* v. *Regan* (1850), 4 Cox, C. C. 335; *R.* v. *Dosset* (1846), 2 Cox, C. C. 243; *R.* v. *Harris* (1864), 4 F. & F. 342; *R.* v. *Taylor* (1851), 5 Cox, C. C. 138; *R.* v. *Bailey* (1847), 2 Cox, C. C. 311; *R.* v. *Gray* (1866), 4 F. & F. 1102; *R.* v. *Grant* (1865), 4 F. & F. 322; *R.* v. *Heseltine* (1873), 12 Cox, C. C. 404.

(*b*) 24 & 25 Vict. c. 97.

(*c*) *Ibid.*, s. 58. And see *R.* v. *Philp* (1830), 1 Mood. C. C. 263; *R.* v. *Newill* (1836), 1 Mood. C. C. 458; *R.* v. *Davies* (1858), 1 F. & F. 69.

(*d*) See *M'Pherson* v. *Daniels* (1829), 10 B. & C. 263, 272, *per* LITTLEDALE, J.; *R.* v. *Harvey* (1823), 2 B. & C. 257, 268, *per* BEST, J.

(*e*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 60. Compare the corresponding provisions, as regards false pretences, of the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 88, see p. 688, *ante*, and of the Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 44, see p. 764, *ante*. The wording of s. 60 makes the case of *R.* v. *Connor* (1846), 2 Cox, C. C. 65, no longer applicable as an authority on this point. It is only necessary to allege or prove an intent to injure or defraud in the case of offences of which such an intent is a necessary ingredient, *e.g.*, offences under the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 3, 14, 15, 24, 28, 29, 31, 32, 33, 35, 43, 45, 46, 47, 54 (see *R.* v. *Heseltine* (1873), 12 Cox, C. C. 404; *R.* v. *Newill* (1836), 1 Mood. C. C. 458; but see *R.* v. *Smith* (1831), 4 C. & P. 569). In an indictment under s. 3 for setting fire to the defendant's own house with intent to defraud an insurance company, it is not necessary to allege who is the owner of the property injured (*R.* v. *Newboult* (1872), L. R. 1 C. C. R. 344). *Quære* whether it is necessary to insert this allegation in any indictment under the Act; but where the essence of an offence is the unlawful and malicious injury of someone else's property, and when no offence could be committed, if the property injured belonged to the accused, it would seem advisable to aver to whom the property belongs.

(*f*) *R.* v. *Rutter* (1908), 1 Cr. App. Rep. 174; *R.* v. *Twose* (1879), 14 Cox, C. C. 327; *Heard* v. *Coles* (1891), 56 J. P. 119; *R.* v. *James* (1837), 8 C. & P. 131; *Hamilton* v. *Bone* (1888), 16 Cox, C. C. 437; *R.* v. *Dodson* (1839), 9 Ad. & El. 704; *Leyson* v. *Williams* (1890), 54 J. P. 631; *Denny* v. *Thwaites*, 35 L. T. 628; and see *Croydon Rural District Council* v. *Cowley* (1909), 100 L. T. 441.

(*g*) *R.* v. *James*, *supra*. An indictment under the Malicious Damage Act,

SECT. 5. Malicious Damage to Property.

reasonably have supposed to be necessary for the assertion of his right, he loses his claim to protection (*h*).

Property in offender's possession.

1502. If a person does any act made punishable by the Malicious Damage Act, 1861 (*i*), with an intent to injure or defraud any other person, he is none the less guilty although he may be in possession of the property against or in respect of which the act was done (*k*).

SUB-SECT. 2.—*Arson.*

Arson at common law.

1503. It is a felony at common law wilfully and maliciously to burn the dwelling-house of another (*l*).

To constitute the offence of arson it is necessary that something should be actually consumed by fire (*m*), though no flame need be visible (*n*); charring is sufficient (*o*), but not mere scorching (*p*).

The punishment for arson at common law is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour for not more than three years (*q*).

Arson by statute.

1504. By statute (*r*) everyone is guilty of felony who unlawfully and maliciously sets fire (1) to any church, chapel, meeting-house, or other place of divine worship (*s*); (2) to any dwelling-house,

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1861 (24 & 25 Vict. c. 97), must allege that the act was done feloniously, unlawfully, and maliciously (see *R.* v. *Reader* (1830), 4 C. & P. 245).

(*h*) *R.* v. *Clemens*, [1898] 1 Q. B. 556, C. C. R.; *Heaven* v. *Crutchley* (1903), 68 J. P. 53.

(*i*) 24 & 25 Vict. c. 97, s. 59.

(*k*) *Ibid.* This meets the case of injuries by tenants (see *ibid.*, s. 13, and *Mills* v. *Collett* (1829), 6 Bing. 85; but see *R.* v. *Rutter* (1908), 1 Cr. App. Rep. 174).

(*l*) 3 Co. Inst. 66, 67; 1 Hale, P. C. 566; cited in *R.* v. *Faulkner* (1877), 13 Cox, C. C. 550, at p. 552, C. C. R. (Ir.). It must appear on the face of the indictment that the house was that of another; the indictment must also state whose the house is, and the evidence must establish that the house is a dwelling-house, and is the house of the person named in the indictment (*R.* v. *Rickman* (1789), 2 East, P. C. 1034; and see *R.* v. *Glandfield* (1791), 2 East, P. C. 1034; *R.* v. *Connor* (1846), 2 Cox, C. C. 65); but the house of another does not include a landlord's house of which the prisoner is in possession under a lease for years or from year to year (*R.* v. *Breeme* (1780), 1 Leach, 220; *R.* v. *Pedley* (1782), 1 Leach, 242); and see *R.* v. *Connor* (1846), 2 Cox, C. C. 65; *R.* v. *Kimbrey* (1854), 6 Cox. C. C. 464). If a defendant by a wilful and malicious act sets fire to his own house with intent to defraud, and other houses contiguous thereto are consequently set on fire, the defendant is guilty of felony (*R.* v. *Isaac* (1799), 2 East, P. C. 1031; and see *R.* v. *Faulkner*, *supra*, *per* BARRY, J., at p. 555). It is a misdemeanour at common law for a person to burn his own house, if it is contiguous to others (*R.* v. *Probert* (1799), 2 East, P. C. 1030).

(*m*) *R.* v. *Russell* (1842), Car. & M. 541.

(*n*) *R.* v. *Stallion* (1833), 1 Mood. C. C. 398.

(*o*) *R.* v. *Parker* (1839), 9 C. & P. 45.

(*p*) *R.* v. *Russell*, *supra*.

(*q*) Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 8; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions. As to the punishment of statutory arson, see p. 772, *post*.

(*r*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 1—5, 42.

(*s*) *Ibid.*, s. 1.

any person being therein (*a*); (3) (*b*) to any house (*c*), any stable (*d*), coach-house, outhouse (*e*), warehouse, office, shop, mill, malthouse, hop-oast, barn (*f*), storehouse, granary, hovel, shed (*g*),

(*a*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 2. It is sufficient to support the indictment, if the person charged was the only "person therein" at the time at which he committed the offence (*R.* v. *Pardoe* (1894), 17 Cox, C. C. 715); but the house which is set on fire must be in the possession of someone who lives there. When an indictment for setting fire to a common gaol occupied by none but prisoners described the gaol as a house and alleged in divers counts that it was in the possession of the gaoler and of the inhabitants of a liberty and of the justices and of persons unknown, and it appeared that the gaoler did not live in the gaol, it was held that the indictment could not be supported (*R.* v. *Connor* (1846), 2 Cox, C. C. 65). But it appears that the prisoner could have been convicted if the gaoler's house had been part of the gaol (*ibid.*); see *R.* v. *Donnavan* (1770), 1 Leach, 69; and *R.* v. *Kimbrey* (1854), 6 Cox, C. C. 464). It is also necessary that a person should be within at the moment when the house itself (as distinguished from an outhouse etc.) is set on fire (*R.* v. *Warren* (1844), 1 Cox, C. C. 68; *R.* v. *Fletcher* (1845), 2 Car. & Kir. 215). A person charged with this offence (without any charge of intent to injure or defraud any person) cannot be convicted of setting fire "to any house" under the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 3, since for such latter offence the intent to defraud or injure is essential (*R.* v. *Paice* (1843), 1 Car. & Kir. 73; *R.* v. *Fletcher*, *supra*).

(*b*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 3. A building intended for a house which is not finished is not a house within the meaning of this sub-section (*R.* v. *Edgell* (1867), 11 Cox, C. C. 132; *R.* v. *St. Briavells* (*Inhabitants*) (1828), 8 B. & C. 461), nor is a building in which it is intended that workmen shall eat, and dry their clothes, a house within the meaning of this sub-section (*R.* v. *England* (1844), 1 Car. & Kir. 533).

(*c*) It is not necessary that the house should be furnished (*R.* v. *Kimbrey* (1854), 6 Cox, C. C. 464).

(*d*) The building set on fire must have been a stable at the time of the offence; therefore an erection originally built for and used as a stable, but subsequently and at the date of the fire used for another purpose, is not a stable (*R.* v. *Colley* (1843), 2 Mood. & R. 475; *R.* v. *Munson* (1847), 2 Cox, C. C. 186); but a stable remains a stable until some intention has been shown of using it permanently for a different purpose (*R.* v. *Hammond* (1844), 1 Cox, C. C. 60; and see also *R.* v. *Haughton* (1833), 5 C. & P. 555).

(*e*) A building to constitute an "outhouse" must be parcel of a dwelling-house (*R.* v. *St. Briavells* (*Inhabitants*) (1828), 8 B. & C. 461; *R.* v. *Haughton* (1833), 5 C. & P. 555). Thus it does not include an unfinished dwelling-house where materials are deposited (*R.* v. *St. Briavells*, *supra*); or a building standing apart from the nearest dwelling-house, and wholly unconnected therewith (*R.* v. *Haughton*, *supra*; *R.* v. *Ellison* (1832), 1 Mood. C. C. 336) or a cart-hovel consisting of a stubble roof supported by uprights in a field at a distance from other buildings (*R.* v. *Parrot* (1834), 6 C. & P. 402). An erection within the curtilage of a dwelling-house may, however, be an outhouse though not actually adjoining, as a schoolroom separated from the dwelling-house by a narrow passage and partly covered by the roof thereof (*R.* v. *Winter* (1815), Russ. & Ry. 295), or a shed in a farmyard fenced in along with the dwelling-house but not contiguous thereto (*R.* v. *Stallion* (1834), 1 Mood. C. C. 398); or a pig-stye opening into a yard in common with the dwelling-house and fenced in along with the dwelling-house (*R.* v. *Janes* (1844), 1 Car. & Kir. 303; see also *R.* v. *North* (1795), 2 East, P. C. 1021). Where the erection is wholly unconnected with a dwelling-house, the actual distance by which it is separated is immaterial (*R.* v. *Hammond* (1844), 1 Cox, C. C. 60)

(*f*) An unfinished dwelling-house used for the purpose of a barn is not a barn (*R.* v. *St. Briavells* (*Inhabitants*) (1828), 8 B. & C. 461). A person who sets fire to a stack, as a natural and probable consequence of which a barn is burnt, is indictable for setting fire to the barn (*R.* v. *Cooper* (1833), 5 C. & P. 535).

(*g*) An erection used for storing building material has been held to be a shed

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Arson by statute.

or fold, or to any farm building, or to any building (*h*) or erection used in farming land, or in carrying on any trade or manufacture or any branch thereof (*i*), whether the same be in the possession of the offender or of any other person, with intent thereby to injure or defraud any person (*k*); (4) to any station, engine-house, warehouse, or other building belonging or appertaining to any railway, port, dock, harbour, canal, or other navigation (*l*); (5) to any public building other than those above-mentioned belonging to the King or any county, riding, division, city, borough, poor law union, parish, or place, or any university or college or hall thereof, or any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution (*m*); (6) to any ship or vessel whether complete or unfinished (*n*); (7) to any mine of coal, cannel coal, anthracite, or other mineral fuel (*o*).

The punishment for any such offence is penal servitude for life or for not less than three years, or imprisonment for not more than two years with or without hard labour, or if the offender is a male under sixteen years, with or without whipping (*p*).

(*R.* v. *Amos* (1851), 5 Cox, C. C. 222, C. C. R.; but see *R.* v. *Munson* (1847), 2 Cox, C. C. 186). It makes no difference how the erection is covered in (*R.* v. *Amos*, *supra*).

(*h*) A dwelling-house that is unfinished may be a building within the meaning of this sub-section (*R.* v. *Manning* (1871), 12 Cox, C. C. 106, C. C. R.), but *quære* not if the external walls are complete (*ibid.*, *per* KELLY, C.B., at p. 108).

(*i*) See *R.* v. *Munson* (1847), 2 Cox, C. C. 186.

(*k*) It has been held that in an indictment for this offence it is not necessary to state to whom the house belongs (*R.* v. *Newboult* (1872), 12 Cox, C. C. 148, C. C. R.). It was held in *R.* v. *March* (1828), 1 Mood. C. C. 182, that there must be an intent to injure or defraud some third person not identified with the prisoner, and therefore a wife setting fire to her husband's house for the purpose of doing him a personal injury did not commit an offence under stat. (1827) 7 & 8 Geo. 4, c. 30, s. 2, which is to the same effect as s. 3 of the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97). Since the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75) (see ss. 12 and 16), a husband may be found guilty of setting fire to his wife's house or a wife of setting fire to her husband's house, but no criminal proceedings for such an offence can be taken under that Act while the husband and wife are living together, nor while they are living apart as to any act done by one in respect of the property of the other while they were living together (see *ibid.*, s. 12). As to the intent to injure or defraud, see p. 769, *ante*.

(*l*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 4.

(*m*) *Ibid.*, s. 5.

(*n*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 42 A small pleasure boat, eighteen feet long, appears to be a "ship or vessel" for the purpose of this offence (*R.* v. *Bowyer* (1831), 4 C. & P. 559). The same penalty is provided (*ibid.*, s. 43) where the setting fire is with intent to prejudice the owner, part-owner, or underwriters of "any policy of insurance upon such ship or vessel, or upon the freight thereof, or upon any goods on board the same." This offence may be committed by a person who is himself a part-owner (*R.* v. *Philp* (1830), 1 Mood. C. C. 263, 272), and such part-owner may be guilty as accessory before the fact (*R.* v. *Wallace* (1841), Car. & M. 200). It has also been held that there may be an intent to prejudice the underwriter though no goods are "on board" the vessel (*R.* v. *Wallace*, *supra*). As to setting fire etc. to His Majesty's ships, see p. 773, *post*. As to accidentally setting fire to a ship in the course of an unlawful act, see *R.* v. *Faulkner* (1877), 13 Cox, C. C. 550, C. C. R., and p. 768, *ante*.

(*o*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 26.

(*p*) *Ibid.*, ss. 1—5, 26, 42; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69),

Setting fire to other buildings etc.

1505. By statute (*q*) everyone is guilty of felony who unlawfully and maliciously sets fire (1) (*r*) to any building other than those above mentioned ; (2) to any matter or thing being in, against, or under any building under such circumstances that if the building were thereby set on fire a felony would be committed (*s*) ; (3) who by any overt act attempts to set fire to any building or to any matter or thing being in, against, or under any building (*t*), or to any ship (*a*), or to any mine (*b*) under such circumstances that, if the same were thereby set fire to, the offenders would be guilty of felony.

The punishment for any such offence is penal servitude for not more than fourteen or for not less than three years, or imprisonment for not more than two years with or without hard labour, and if the offender is a male under the age of sixteen, with or without whipping (*c*).

Setting fire to the King's ships etc.

1506. By statute (*d*) everyone is guilty of felony who wilfully and maliciously sets on fire, or causes to be set on fire, or assists etc. in setting fire to (1) any of the King's ships of war, whether afloat or being built, or begun to be built in any of the King's dockyards or in private yards ; (2) any of the King's arsenals, magazines, dockyards, ropeyards, victualling offices, or any of the buildings erected thereon or belonging thereto ; (3) any timber or materials there placed for building, repairing, or fitting out of ships ; (4) any of the King's military, naval, or victualling stores or other ammunition of war ; (5) any place where such stores or ammunition are kept, placed, or deposited.

The punishment for this offence is death (*e*).

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s. 1 ; Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict. c. 54). These offences are not triable at quarter sessions.

(*q*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 6, 7, 16.

(*r*) *Ibid.*, s. 6. It is immaterial whether it is complete or incomplete (*R.* v. *Manning* (1871), 12 Cox, C. C. 106, C. C. R.). But possibly a house of which only the external walls are complete is not a building within the section (*ibid.*).

(*s*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 7. A person does not commit this offence who merely sets fire to goods in a house without any intention of burning the house or injuring the owner of the house (*R.* v. *Child* (1871), 12 Cox, C. C. 64, C. C. R. ; *R.* v. *Nattrass* (1882), 15 Cox, C. C. 73 ; *R.* v. *Harris* (1882), 15 Cox, C. C. 75) ; and under such circumstances, even if the house is burnt, he is not guilty (*R.* v. *Batstone* (1864), 10 Cox, C. C. 20, *per* WILLIAMS, J., at p. 22 ; *R.* v. *Nattrass*, *supra*, *per* HAWKINS, J.), but an intention to burn the house may be inferred where the prisoner knows that the probable result of his act will be the burning of the house, or is reckless whether the house catch fire or not (*R.* v. *Nattrass*, *supra* ; *R.* v. *Harris*, *supra*).

(*t*) *Ibid.*, s. 27. As to what is an attempt by an overt act to set fire to a thing, see *R.* v. *Taylor* (1859), 1 F. & F. 511, where a defendant knelt close to a stack and struck a match intending to set fire to the stack, but discovering that he was watched, blew out the match and went away, and it was held that he was guilty of an attempt by an overt act to set fire to a stack.

(*a*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 8.

(*b*) *Ibid.*, s. 44.

(*c*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 6, 7, 8, 27, 44 ; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*d*) Dockyards, etc. Protection Act, 1772 (12 Geo. 3, c. 24).

(*e*) *Ibid.*, s. 1. The offences under this Act are criminal whether committed in Great Britain or in any of the islands, countries, ports, or places thereunto belonging. The sentences of death under this statute may be recorded. The offence is not triable at quarter sessions.

SECT. 5. Malicious Damage to Property.

Setting fire to vegetable produce.

1507. Everyone is guilty of felony (*f*) who sets fire to certain specified vegetable produce (*g*).

The punishment for this offence is penal servitude for life or for not more than three years, or imprisonment, with or without hard labour, for not more than two years, and in the case of a male under sixteen years of age, with or without a whipping (*h*).

Setting fire to crops.

1508. Everyone is guilty of felony who sets fire (*i*) to any crop of hay, grass, corn, grain, or pulse, or of any cultivated vegetable produce, whether standing or cut down, or to any part of any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern wheresoever the same be growing (*k*).

The punishment for this offence is penal servitude for not more than fourteen or for not less than three years, or imprisonment with or without hard labour for any term not exceeding two years, and in the case of a male under sixteen years of age, with or without a whipping (*l*).

(*f*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 17.

(*g*) Namely, to any stack of corn, grain, pulse, tares, hay, straw, haulm, stubble, or of any cultivated vegetable produce, or of furze, gorse, heath, fern, turf, peat, coals, charcoal, wood or bark, and to any "steer" of wood or bark (*ibid.*, s. 17). It is not necessary to aver that the stack was thereby burnt (*R.* v. *Salmon* (1802), Russ. & Ry. 26), or that the prisoner then and there set fire to the stack (*R.* v. *Swatkins* (1831), 4 C. & P. 548). An indictment for setting fire to a stack of beans or a stack of barley is good, beans being a species of pulse (*R.* v. *Woodward* (1831), 1 Mood. C. C. 323), and barley a species of corn or grain (*R.* v. *Swatkins*, *supra*), of which facts the court will take judicial notice. A mistake as to the name of the place where the offence was committed is immaterial (*R.* v. *Woodward*, *supra*). Material may be collected and "stacked" in a building as well as out of doors (*R.* v. *Munson* (1847), 2 Cox, C. C. 186); but an indictment for setting fire to a "cock" of hay is bad, but the indictment would, it seems, be good if drawn under s. 16 of the Malicious Damage Act, 1861 (*R.* v. *M'Keever* (1871), 5 I. R. C. L. 86). A parcel of unthreshed wheat is not a "stack" (*R.* v. *Judd* (1788), 1 Leach, 484). A quantity of straw on a lorry, though it may have been taken from a stack, is not a "stack" of straw (*R.* v. *Satchwell* (1873), 12 Cox, C. C. 449, C. C. R.); and a score of faggots piled in a loft made by a temporary floor over an archway between two houses is not a stack of wood (*R.* v. *Aris* (1834), 6 C. & P. 348); with regard to the material itself, a stack of flax with the seed in it may be described as a stack of grain (*R.* v. *Spencer* (1856), 7 Cox, C. C. 189, C. C. R.); but a stack of stubble (*R.* v. *Reader* (1830), 4 C. & P. 245), or a stack of which the lower part is cole seed straw, and the upper part wheat stubble is not a stack of straw (*R.* v. *Tottenham* (1835), 7 C. & P. 237); nor is a stack of sedge and rushes a stack of straw (*R.* v. *Baldock* (1846), 2 Cox, C. C. 55). Straw in this section means straw of wheat, barley, oats and rye.

(*h*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 17; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*i*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 16.

(*k*) *Ibid.* Flax with the seed in it may be described as grain (*R.* v. *Spencer* (1856), 7 Cox, C. C. 189, C. C. R.). A single detached tree is not "a part of a wood (*R.* v. *Davy* (1844), 1 Cox, C. C. 60, decided under the corresponding words of stat. (1827) 7 & 8 Geo. 4, c. 30, s. 17); but if a wood is unlawfully and maliciously fired, the means whereby the offence is committed are immaterial; therefore a prisoner is guilty if he sets fire to a summer-house in a wood, and the wood is burnt in consequence of such act (*R.* v. *Price* (1841), 9 C. & P. 729).

(*l*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 16; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

1509. Everyone who by any overt act attempts to set fire to any stack of corn etc. or to any crop of hay etc. (*m*) under such circumstances that if the same were thereby set fire to the offender would be guilty of felony, is also guilty of felony.

Attempt to set fire to stack of corn etc.

The punishment for such an offence is penal servitude not exceeding seven and not less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without a whipping (*n*).

SUB-SECT. 3.—*Injury by Explosives.*

1510. Everyone is by statute (*o*) guilty of felony who unlawfully and maliciously causes by any explosive substance (*p*) an explosion of a nature likely to endanger life or to cause serious injury to property, whether any injury to person or property has been actually caused or not.

Causing explosion likely to endanger life etc.

The punishment for this offence is penal servitude for life, or for any term not less than three years, or imprisonment with or without hard labour for not more than two years (*q*).

1511. Everyone is by statute (*r*) guilty of felony who unlawfully or maliciously within or (being a subject of the King) without the King's dominions (1) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in the United Kingdom of a nature likely to endanger life or to cause serious injury to property; (2) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life or cause serious injury to property in the United Kingdom, or to enable any other person by means thereof to cause such injury etc. The offence is complete whether or not any explosion takes place or any injury to person or property has been actually caused.

Doing act with intent to cause explosion.

The punishment for these offences is penal servitude for not more than twenty or not less than three years, or imprisonment for not more than two years with or without hard labour, on condition the explosive substance is to be forfeited (*s*).

1512. Everyone is by statute (*t*) guilty of felony who makes or knowingly has in his possession or under his control any explosive

Making explosive substances.

(*m*) See Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 16, 17.

(*n*) *Ibid.*, s. 18; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions. As to threatening to set fire to buildings etc., see p. 791, *post.*

(*o*) Explosive Substances Act, 1883 (46 Vict. c. 3), s. 2.

(*p*) As defined in s. 9, namely, "any materials for making any explosive substance; also any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement"; see *R.* v. *Charles* (1892), 17 Cox, C. C. 499.

(*q*) Explosive Substances Act, 1883 (46 Vict. c. 3), s. 2; and see Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*r*) Explosive Substances Act, 1883 (46 Vict. c. 3), s. 3.

(*s*) *Ibid.*, s. 3; and see Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

(*t*) Explosive Substances Act, 1883 (46 Vict. c. 3), s. 4 (1).

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substance under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, unless he can show that he made it or had it in his possession or under his control for a lawful object.

The punishment for this offence is penal servitude for not more than fourteen or for not less than three years, or imprisonment for not more than two years with or without hard labour, and forfeiture of the explosive substance (*u*).

Accessory to crime under Explosive Substances Act, 1883.

1513. Every person is guilty of a felony (*a*) who within (or being a subject of the King without) the King's dominions by the supply of or solicitation for money, the finding of premises, the supply of materials, or in any manner whatever is accessory to the commission of any crime under the Explosive Substances Act, 1883 (*b*).

Such person may be tried and punished in the same manner as if he had been guilty as a principal (*c*).

Under the Explosives Act, 1875 (*d*), in the case of certain offences (*e*) against the Act, punishable on summary conviction, penalties are imposed and the forfeiture of certain explosives and ingredients is directed.

Destruction of building by gunpowder.

1514. Everyone is by statute (*f*) guilty of felony who unlawfully and maliciously by the explosion of gunpowder or other explosive substance destroys, throws down, or damages the whole or any part of any dwelling-house, any person being therein, or any building whereby the life of any person is endangered.

(*u*) Explosive Substances Act, 1883 (46 Vict. c. 3), s. 4 (1); Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*a*) Explosive Substances Act, 1883 (46 Vict. c. 3), s. 5. This offence is not triable at quarter sessions.

(*b*) 46 Vict. c. 3.

(*c*) *Ibid.*, s. 5. As to inquiries under this Act see title EXPLOSIVES.

In an indictment under the Explosive Substances Act, 1883 (46 Vict. c. 3), the same criminal act may be charged in different counts as constituting different crimes, and the prosecutor is not to be put to his election on which count he will proceed (*ibid.*, s. 7 (2)). For all purposes of and incidental to arrest, trial, and punishment, a crime under the Act committed out of the United Kingdom is deemed to have been committed in the place in which the prisoner is apprehended, or is in custody (*ibid.*, s. 7 (3); see p. 277, *ante*). The Act does not exempt any person from criminal proceedings at common law or under some other statute, but no person may be punished twice for the same criminal act (*ibid.*, s. 7 (4)).

(*d*) 38 Vict. c. 17.

(*e*) See *ibid.*, ss. 9, 10, 13, 19, 22, 31, 32—37, 43, 63, 77. Most of these offences are punishable with pecuniary penalties, but if the offence is calculated to endanger the safety or cause serious personal injury to any of the public or the persons employed in or about any factory etc., or to cause a dangerous accident, and was committed wilfully by the personal act, personal default, or personal negligence of the person accused, a sentence of imprisonment, with or without hard labour, for not more than six months may be imposed (*ibid.*, s. 79). Offences under the Act may be prosecuted and penalties recovered and the forfeitures enforced either on indictment or before a court of summary jurisdiction (*ibid.*, s. 91). But a court of summary jurisdiction cannot impose a penalty exceeding £100 or award a term of imprisonment for a longer period than one month. See for these offences, title EXPLOSIVES.

(*f*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 9.

To constitute this offence there must be an intent to destroy etc. a house; a mere act of wanton mischief or assault is not within the statute (*g*). In order to "endanger the life" of any person it is not necessary that any person should receive any actual injury, provided he is put into peril (*h*); nor is it necessary that he should be within the building at the time of the danger (*h*). But his life must be endangered as a result of the damage done to the building specified in the indictment. Evidence of damage to other buildings which may be inhabited is not admissible for the purpose of proving the endangering of life, but is admissible to show that the explosion was violent and calculated to do damage (*h*).

The punishment for this offence is penal servitude for life or for any period not less than three years, or with imprisonment for any term not exceeding two years with or without hard labour, and if the offender is a male under the age of sixteen years, with or without whipping (*i*).

Placing etc. gunpowder in building etc.

1515. Everyone is by statute (*k*) guilty of felony who unlawfully and maliciously places or throws any gunpowder or other explosive substance in, into, upon, under, against, or near any building with intent to destroy or damage any building or any engine, machinery, working tools, fixtures, goods, or chattels, whether or not any explosion takes place or any damage is caused.

Though it is not necessary to constitute this offence that any explosion should take place, nevertheless it must be shown that the explosive substance was in a condition to explode at the time it was thrown (*l*).

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment for not more than two years with or without hard labour, or if the offender is a male under sixteen years of age, with or without whipping (*m*).

There are various statutory provisions under which searches for and seizures of explosives can be made (*n*).

SUB-SECT. 4.—*Riotous Demolition.*

Riotous demolition of churches, houses etc.

1516. All persons are by statute guilty of felony who, being riotously and tumultuously assembled together to the disturbance

(*g*) *R.* v. *Brown* (1863), 3 F. & F. 821.

(*h*) *R.* v. *McGrath* (1881), 14 Cox, C. C. 598.

(*i*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 9; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*k*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 10, 45.

(*l*) Thus, throwing or placing a bottle of gunpowder into a building without a lighted fuse or other means to cause an explosion would not be within the statute; but placing a bundle of lucifer matches against a window would be within the statute, because they are already in a condition to explode by contact (*R.* v. *Sheppard* (1868), 19 L. T. 19).

(*m*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 10; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*n*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 55; Explosives Act, 1875 (38 Vict. c. 17), ss. 73—75; Explosive Substances Act, 1883 (46 Vict. c. 3), s. 8 (1). See title EXPLOSIVES. As to arrest without warrant of persons suspected of offences connected with explosive substances under this Act, see Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 61; Explosives Act, 1875 (38 Vict. c. 17), s. 78.

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of the public peace, unlawfully and with force demolish, or pull down, or destroy, or begin to demolish, pull down, or destroy:—(1) any church, chapel, meeting-house, or other place of divine worship; (2) any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, granary, shed, hovel or fold, or any building or erection used in farming land or in carrying on any trade or manufacture or any branch thereof (*o*); (3) any public building, other than those specified above, belonging to the King, or to any county, riding, division, city, borough, poor law union, parish, or place, or belonging to any university or college, or hall of any university, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription; (4) any fixed or movable machinery prepared or employed in any manufacture or any branch thereof; (5) any steam engine or other engine for sinking, working, ventilating, or draining any mine, or any staith, building, or erection (*p*) used in conducting the business of any mine, or any bridge, waggonway, or truck for conveying minerals from any mine (*q*).

Evidence.

1517. To support a charge of riotously beginning to demolish a house it is necessary to prove that the object of the rioters was to demolish the house, and that they would have demolished it, if they had carried out their intentions (*r*).

Demolition means such demolition as leaves the house no house at all (*a*). It is not necessary that no stone should be left standing (*b*); but it is not enough that the house should be reduced to a dilapidated state if it still remains a house; no injury short of the actual demolition of the walls is sufficient (*c*).

If the rioters intended to demolish the house it is immaterial that they acted with some further motive in view, such as to injure

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(*o*) These erections are similar to those enumerated in the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 3, which imposes penalties for arson (see p. 770, *ante*), except that storehouse and farm building are here omitted. For decisions as to the meanings of the various terms used, see p. 770, *ante*.

(*p*) A scaffold raised above the bottom of a mine for working a vein of coal level with the scaffold is an erection used in conducting the business of a mine (*R.* v. *Whittingham* (1840), 9 C. & P. 234). As to what is a riot, see p. 471, *ante*.

(*q*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 11.

(*r*) *R.* v. *Thomas* (1830), 4 C. & P. 237; *R.* v. *Howell* (1839), 9 C. & P. 437 (see *Drake* v. *Footitt* (1881), 7 Q. B. D. 201). These cases were decided on the repealed stat. (1827) 7 & 8 Geo. 4, c. 30, s. 8, the wording of which is reproduced in the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 11. If once the intention is proved and some act in pursuance thereof, the fact that completion of the intention was prevented is immaterial; but if the mob desist of their own accord before complete demolition, this is some evidence from which the jury may infer that there was no intention to demolish (*R.* v. *Howell*, *supra*). Destroying movable shop shutters is not beginning to demolish a house, as the shutters are not part of the freehold (*R.* v. *Howell*, *supra*).

(*a*) *R.* v. *Langford* (1842), Car. & M. 602, C. C. R., *per* PATTESON, J.

(*b*) *R.* v. *Langford*, *supra*; *R.* v. *Phillips* (1842), 2 Mood. C. C. 252 (where the chimney was left standing).

(*c*) *R.* v. *Adams* (1842), Car. & M. 299.

someone there (*d*); injury done not with the object of demolishing the house, but merely with a view to seizing a person who has taken refuge there, does not constitute the offence (*e*); nor does the demolition of a house in the assertion of a supposed right, although the demolition is accompanied by a riot (*f*).

The demolition may be accomplished as well by fire as by any other means (*g*), and in such case it is not necessary that the offender should be indicted for arson (*h*). Where a house has been demolished by fire by rioters, a rioter who was present after the commencement of the demolition may be convicted as a principal, although there may be no proof that he was present at the time the fire was lighted (*i*).

Persons are "riotously" assembled together where their assembly is attended with circumstances of alarm or terror to any of the King's subjects (*j*).

The punishment for any such offence is penal servitude for life or for any term not less than three years, or imprisonment for any term not exceeding two years with or without hard labour (*k*).

Damage to churches etc. by rioters.

1518. All persons are by statute (*l*) guilty of a misdemeanour who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force injure or damage any church or any of the erections or things specified above (*m*).

The punishment for this offence is penal servitude for not exceeding seven years and not less than three years, or imprisonment not exceeding two years with or without hard labour (*n*).

(*d*) *R.* v. *Howell*, (1839), 9 C. & P. 437; *R.* v. *Batt* (1834), 6 C. & P. 329.

(*e*) *R.* v. *Price* (1833), 5 C. & P. 510.

(*f*) *R.* v. *Langford* (1842), Car. & M. 602, C. C. R. As to assertion of a supposed right, see p. 769, *ante*. See *R.* v. *Clemens*, [1898] 1 Q. B. 556, C. C. R.

(*g*) *R.* v. *Howell* (1839), 9 C. & P. 437.

(*h*) *R.* v. *Harris* (1842), Car. & M. 661; *R.* v. *Whiston* (1842), 2 Dowl. (N. S.) 408.

(*i*) *R.* v. *Simpson* (1842), Car. & M. 669. This is on the ground that the offence consists not simply in the fact of destroying a house by fire, but in the combined fact of riotously assembling, and during the riot demolishing the house. A person may be convicted of the offence who during the demolition of a house by fire has thrown articles of furniture into a fire which has been made outside the house, if the jury find that he was knowingly encouraging and taking part in the general design of destroying the house and furniture (*R.* v. *Harris* (1842), Car. & M. 661).

(*j*) Even to one person (*R.* v. *Langford* (1842), Car. & M. 602, C. C. R.); see *Field* v. *Metropolitan Police* (*Receiver*), [1907] 2 K. B. 853. See p. 471, *ante*.

(*k*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 11; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.

(*l*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 12. Any person put on trial for demolishing etc. under s. 11 may be found guilty of injuring under s. 12 and punished accordingly. The object of s. 12 is to provide for cases where there is no sufficient evidence of an intention to proceed to the total demolition of a house etc., and where no such intent ever existed, but where there is a riot and injury done (Greaves, Criminal Consolidation Acts, 2nd ed., 218).

(*m*) See p. 778, *ante*.

(*n*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 12. This offence is not triable at quarter sessions.

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SUB-SECT. 5.—*Demolition by Tenants.*

Injury to house by tenants.

1519. Everyone is by statute (*o*) guilty of a misdemeanour who, being possessed of a dwelling-house or other building or part thereof, held for any term or at will, or held over after termination of a tenancy, unlawfully and maliciously pulls down or demolishes or begins to pull down or demolish the same or any part thereof, or pulls down or severs any fixtures affixed thereto (*p*).

The punishment for these offences is imprisonment without hard labour, or fine, or both (*q*).

SUB-SECT. 6.—*Damaging Goods being Manufactured etc.*

Damaging goods in course of manufacture etc.

1520. Everyone by statute (*r*) commits a felony who unlawfully and maliciously cuts, breaks, or destroys, or damages with intent to destroy or render useless (1) any goods or article of silk, woollen, linen, cotton, hair, mohair, or alpaca (or any one or more of these materials mixed with each other or with another material), framework-knitted piece, stocking, hose, or lace in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage of manufacture (*s*); or (2) any warp or shute of the above-mentioned materials; (3) any fixed or movable loom, frame, machine, engine, rack, tackle (*t*), tool, or implement used in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles.

(*o*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 13. As to damage done in the course of a riot, see p. 777, *ante*.

(*p*) As to what persons may be considered in "possession," see *R.* v. *Ball* (1824), 1 Mood. C. C. 30; *R.* v. *Connor* (1846), 2 Cox, C. C. 65; *R.* v. *Wallis* (1832), 1 Mood. C. C. 344; *R.* v. *Allison* (1843), 1 Cox, C. C. 24; *R.* v. *Kimbrey* (1854), 6 Cox, C. C. 464. As to fixtures, see title LANDLORD AND TENANT.

(*q*) This offence is triable at quarter sessions.

(*r*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 14. The word "feloniously" must be used in the indictment for such an offence (*R.* v. *Gray* (1864), 9 Cox, C. C. 417, C. C. R.; so also must the words "unlawfully and maliciously" (*R.* v. *Lewis* (1830), 2 Russell on Crimes, 799). An indictment in such a case alleging that an offence was committed "feloniously, voluntarily and maliciously" instead of "unlawfully and maliciously" is bad (*R.* v. *Reader* (1830), 4 C. & P. 245).

(*s*) The process of manufacture continues until the article is fit for immediate sale. Therefore an article which is complete so far as manufacture and texture are concerned, but requires to be dyed before it will be fit for the market, is still in process of manufacture (*R.* v. *Woodhead* (1836), 1 Mood. & R. 549, decided under the corresponding words in the stat. (1827) 7 & 8 Geo. 4, c. 30, s. 3).

(*t*) Malicious cutting of tackle is a complete offence, and it is unnecessary to aver or prove an intent to destroy or render it useless (*R.* v. *Smith* (1853), 6 Cox, C. C. 198). The cords used to raise the "harness" or working body of a loom constitute tackle (*ibid.*). *Quære*, whether the cutting of the "thrum" (*i.e.*, the ends of the woollen threads generally left in the machine when the cloth is finished) is an offence; cutting the thrum is not cutting warp, but the fact that the prisoner cut the thrum may be given in evidence in support of a count for cutting "tackle" in order to show that the act was done maliciously (*ibid.*).

The wording of the section is different from that of the stat. (1827) 7 & 8 Geo. 4, c. 30, and the cases under that statute are no longer applicable as authorities for cases under s. 14 (see *R.* v. *Clegg* (1848), 3 Cox, C. C. 295). The removal of part of a frame without which the frame is imperfect and inoperative is "damaging" a frame, although the removed part is capable of being replaced and so making the frame complete and workable (*R.* v. *Tacey* (1821), Russ. & Ry. 452; compare *R.* v. *Fisher* (1865), L. R. 1 C. C. 7, C. C. R.).

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour for not more than two years, or if the offender is a male under sixteen, whipping (*u*).

Forcible entry.

1521. Anyone is by statute (*a*) guilty of felony who by force enters any house, shop, building, or place with intent to commit any such offence.

The punishment is the same as for the last-mentioned offence (*b*).

Injury to machinery.

1522. Everyone by statute (*c*) commits a felony who unlawfully and maliciously cuts, breaks, or destroys, or damages with intent to destroy or render useless, (1) any fixed or movable machine or engine used, or intended to be used, for sowing, reaping, mowing, threshing, ploughing, or drawing, or for performing any other agricultural operation (*d*); (2) any machine or engine (*e*), or any tool or implement fixed or movable prepared for or employed in any manufacture other than that of the goods or articles specified in the description of the last-mentioned offences.

The punishment for any such offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without a whipping (*f*).

SUB-SECT. 7.—*Destroying Trees etc.*

Destroying hop-binds.

1523. Everyone commits a felony (*g*) who unlawfully and maliciously cuts or otherwise destroys any hop-binds growing on poles in any plantation of hops.

The punishment is penal servitude for not more than fourteen nor

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(*u*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 14; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1.

(*a*) *I bid.*

(*b*) *I bid.*

(*c*) *I bid.*, s. 15.

(*d*) Such displacement of parts of a machine as will prevent the machine from working, and may ultimately cause damage to result, constitutes "damage" to a machine, although if the displaced parts be restored the machine will become workable (*R.* v. *Fisher* (1865), L. R. 1 C. C. 7, C. C. R.; compare *R.* v. *Tacey* (1821), Russ. & Ry. 452; and even a displacement or disarrangement of a machine which causes a trifling injury without preventing the machine from working constitutes "damage" (*R.* v. *Foster* (1852), 6 Cox, C. C. 25).

(*e*) The "silling" on which a machine rests is part of the machine (*R.* v. *Foster, supra*).

(*f*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 15. An indictment under this section must allege that the act was done "feloniously" (*R.* v. *Gray* (1864), 9 Cox, C. C. 417, C. C. R.). In order to constitute this offence it does not appear to be necessary that the machine should be pieced together and ready for use; it may have been taken to pieces and be in different places (*R.* v. *Mackerel* (1831), 4 C. & P. 448; or certain parts not essential to the working may be wanting (*R.* v. *Bartlett* (1831), 2 Deacon, Digest of Criminal Law, 1517; *R.* v. *Chubb* (1831), 2 Deacon, Digest of Criminal Law, 1517; and see note (*d*), *supra*). Where a machine has already been so far destroyed as to be incapable of working the destruction of the remaining parts is not the destruction of a "machine" (*R.* v. *West* (1831), 2 Deacon, Digest of Criminal Law, 1518). This offence is triable at quarter sessions.

(*g*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 19.

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less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, whipping (*h*).

Destroying trees.

1524. Everyone by statute (*i*) commits a felony who unlawfully and maliciously cuts, breaks, barks, roots up, or otherwise destroys or damages (*k*) (1) the whole or part of any tree, sapling, or shrub, or any underwood growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, in case the damage done exceeds the value of £1 (*l*); (2) the whole or any part of any tree etc. growing elsewhere than in the places above specified, if the damage done exceeds £5 (*m*).

The punishment for such an offence is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for not more than two years, and in the case of a male under sixteen, with or without a whipping (*m*).

If the damage done to such tree, sapling, shrub, or underwood (wherever the same may be growing) amounts to 1*s.* at the least, the offender may be tried summarily and fined or imprisoned (*n*). But anyone who, having been twice convicted of this offence, again commits such offence is guilty of an indictable misdemeanour. The punishment on conviction of such misdemeanour is imprisonment, with or without hard labour, and if the offender is a male under sixteen, with or without whipping (*o*).

Destroying plants etc.

1525. It is an offence punishable on summary conviction (*p*) to destroy or damage with intent to destroy any plant, root, fruit, or vegetable production growing in any garden, orchard, nursery ground, hot-house, green-house, or conservatory. But anyone who,

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(*h*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 19; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. To constitute the offence of "destroying," it is necessary to show that the plant was not merely crushed, but killed (*R.* v. *Boucher* (1841), 5 Jur. 709); as to setting fire to crops or stacks of corn; see p. 774, *ante*. The offence is triable at quarter sessions.

(*i*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 20.

(*k*) In *R.* v. *Taylor* (1819), Russ. & Ry. 373, decided under a statute (9 Geo. 1, c. 22) which makes it an offence to cut down or otherwise destroy, it was held that the cutting down of trees without destroying them was an offence within that Act. It therefore seems that it is an offence under the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), to cut etc. trees although they are not totally destroyed.

(*l*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 20. The indictment should state that the damage was done "unlawfully and maliciously"; "feloniously" is not enough (*R.* v. *Lewis* (1830), 2 Russell on Crimes, 799).

(*m*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 20, 21. Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. Damage to the amount specified must be done all at one time (*R.* v. *Williams* (1862), 9 Cox, C. C. 338, C. C. R. (Ir.)), and must be exclusive of consequential damage (*R.* v. *Whiteman* (1854), 6 Cox, C. C. 370, C. C. R.).

(*n*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 22; see too, *ibid.*, s. 53.

(*o*) *Ibid.* The offence is triable at quarter sessions.

(*p*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 23. The punishment is imprisonment with hard labour for not more than six calendar months. It is necessary in any such case to prove the intent to destroy or damage, but if any plant etc. is destroyed or damaged the intent may be inferred, but if there is no destruction or substantial damage no offence is committed (*Eley* v. *Lytle* (1885), 50 J. P. 308).

having been convicted of this offence, again commits such offence commits a felony (*q*).

The punishment for such felony is penal servitude for not more than five nor less than three years, or imprisonment with or without hard labour for two years, and if the offender is a male, with or without a whipping (*r*).

SUB-SECT. 8.—*Injuries to Mines etc.*

Injury to mines.

1526. Everyone by statute (*s*) commits a felony who unlawfully and maliciously (1) causes water to be conveyed or run into any mine or subterranean passage communicating therewith with intent thereby to destroy or injure such mine, or hinder or delay the working thereof (*t*); (2) with the like intent fills up, obstructs, or damages with intent to destroy, obstruct, or render useless any airway, waterway, drain, pit, level, or shaft of or belonging to any mine (*t*); (3) pulls down or destroys or damages with intent to destroy or render useless any steam engine (*a*) or other engine for sinking, draining, ventilating, or working or assisting in sinking, draining, ventilating, or working any mine, or any appliance or apparatus in connection with any such steam engine or other engine, or any staith, building, or erection (*b*) used in conducting the business of

(*q*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 23.

(*r*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions. The offence of unlawfully and maliciously destroying etc. any cultivated root used for the food of man or beast or for medicine, distilling or dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard or nursery ground, is only punishable on summary conviction (Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 24). The offence of unlawfully and maliciously cutting, beating, throwing down, or destroying any fence of any description, or any wall, stile, or gate, or part thereof, is also punishable only on summary conviction (*ibid.*, s. 25).

(*s*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 29.

(*t*) This provision does not extend to any damage committed underground by any owner of any adjoining mine in working the same, or by any person duly employed in such working (Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 28). As to setting fire to mines, see p. 772, *ante*. In *R.* v. *Jones* (1843), 2 Mood. C. C. 293, in an indictment under the stat. 7 & 8 Geo. 4, c. 30, s. 6, it was held that the mine might be laid as the property of the person in possession of and working it, though only an agent for others. *Quære* whether in an indictment under the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), it is necessary to allege or prove whose the property injured is (see *R.* v. *Newboult* (1872), 12 Cox, C. C. 148, C. C. R.). A person who closes the airway of a mine in the exercise of a supposed right does not commit a criminal offence, for in such case he cannot be said to be acting maliciously (*R.* v. *Matthews* (1876), 14 Cox, C. C. 5).

A servant who closes such airway under orders of his master, believing his master's allegation that he has a right so to close it, does not commit a criminal offence, even though the master knows he has no such right, but if the servant knows that the master is acting maliciously he is guilty of the offence (*R.* v. *James* (1837), 8 C. & P. 131).

(*a*) Damage to a cylinder (known as a "drum") which a steam engine causes to revolve and take up rope is not damage to the steam engine (*R.* v. *Whittingham* (1840), 9 C. & P. 234) To set a steam engine going without the machinery being attached, so that the engine works with great velocity and is damaged, is to damage the steam engine (*R.* v. *Norris* (1840), 9 C. & P. 241).

(*b*) A scaffold erected above the bottom of a mine for working a vein of coal on a level with the scaffold is an erection used in conducting the business of a mine (*R.* v. *Whittingham* (1840), 9 C. & P. 234).

SECT. 5. Malicious Damage to Property.

any mine, or any bridge, waggonway or trunk for conveying minerals from any mine, whether such engine, staith, building, erection, bridge, waggonway, or trunk be completed or in an unfinished state (*c*); or (4) who unlawfully and maliciously stops, obstructs, or hinders the working of such steam or other engine, appliance, or apparatus, with intent thereby to destroy or damage any mine, or hinder, obstruct, or delay its working (*d*); (5) wholly or partially cuts through, severs, breaks, or unfastens, or damages, with intent to destroy or render useless, any rope, chain, or tackle (of whatsoever material) used in any mine, or in or upon any inclined plane, railway, or other way, or other work whatsoever, in anywise belonging or appertaining to, or connected with, or employed in any mine or the working or business thereof.

The punishment for any such offence is penal servitude for not more than seven or not less than three years, or imprisonment, with or without hard labour, for not more than two years, and if the offender is a male, with or without a whipping (*e*).

SUB-SECT. 9.—*Injuries to Seabanks etc.*

Injury to seabanks etc.

1527. Everyone by statute (*f*) commits a felony who unlawfully and maliciously breaks down, or cuts down, or otherwise damages or destroys, any seabank or seawall, or the bank, dam, or wall of or belonging to any river, canal, drain, reservoir, pool, or marsh, whereby any land or building shall be or be in danger of being overflowed or damaged; (2) throws, breaks, or cuts down, levels, undermines, or otherwise destroys any quay, wharf, jetty, lock, sluice, floodgate, weir, tunnel, towing-path, drain, watercourse, or other work belonging to any port, harbour, dock, or reservoir, or on or belonging to any navigable river or canal.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without whipping (*g*).

Injury to seawalls, waterways etc.

1528. Everyone by statute (*h*) commits a felony who unlawfully and maliciously cuts off, draws up, or removes any piles, chalk, or other materials, fixed in the ground and used for securing any seabank or seawall, or the bank, dam, or wall of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty, or lock, or opens or draws up any floodgate or sluice, or does any other injury or mischief to any navigable river or canal with intent, and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or

(*c*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 29.
(*d*) *Ibid.*
(*e*) *Ibid.*, ss. 28, 29; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions.
(*f*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 30.
(*g*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.
(*h*) *Ibid.*, s. 31.

without hard labour, and if the offender is a male under sixteen years of age, a whipping (*i*).

Destroying dams etc.

1529. Any person is by statute (*k*) guilty of a misdemeanour (1) who unlawfully and maliciously cuts through, breaks down, or otherwise destroys any dam, floodgate, or sluice of any fishpond, or water which is private property, or in which there is any private right of fishery, with intent to take or destroy, or so as to cause the loss or destruction of the fish therein, or puts any lime or other noxious material in any such pond or water, or in any salmon river (*l*), with intent to destroy any fish that may there be or may thereafter be put therein; (2) cuts through, breaks down or otherwise destroys or injures the dam or floodgate of any mill-pond, reservoir, or pool.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without a whipping (*m*).

SUB-SECT. 10.—*Injuries to Bridges etc.*

Destroying bridges etc.

1530. Everyone by statute (*n*) commits a felony who unlawfully and maliciously (1) pulls or throws down, or in anywise destroys, any bridge, whether over any stream of water or not, viaduct, or aqueduct, over or under which any highway, railway, or canal shall pass; or (2) does any injury with intent to render, and so as in fact to render, such bridge, viaduct, or aqueduct, or the highway,

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(*i*) Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. An Act of Parliament making it an offence to place an obstruction within ten feet of high-water mark of a haven only applies to an obstruction in a place where a right of way exists, and does not take away the rights of individuals where there is no such right of way (*Harrod* v. *Worship* (1861), 1 B. & S. 381).

(*k*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 32; Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), s. 13; and see title FISHERIES.

(*l*) See Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), s. 13, and *R.* v. *Vasey*, [1905] 2 K. B. 748, C. C. R.

(*m*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 32; Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), s. 13; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions. Persons also incur penalties under the Salmon Fishery Act, 1861 (24 & 25 Vict. c. 109), s. 5, who, otherwise than in the exercise of any right, cause or knowingly permit to flow, or put or knowingly permit to be put, into any waters containing salmon, or any tributaries thereof, any liquid or solid matter to such an extent as to cause the waters to poison or kill the fish. Even where a person does any such act in pursuance of a legal right he must use reasonable means to render such matter harmless. The Act is not intended either to prevent a person from acquiring a legal right, or to legalise any act or default which but for this Act would be a nuisance (*ibid.*); these penalties are recoverable on summary conviction. Penalties recoverable on summary conviction are also incurred by persons who use dynamite or other explosive substance to catch or destroy fish either in a public fishery or in any private water. See Fisheries (Dynamite) Act, 1877 (40 & 41 Vict. c. 65), s. 2; Freshwater Fisheries Act, 1878 (41 & 42 Vict. c. 39), s. 12. The manufacture, sale, or exposing for sale at any place within the British Islands of any instrument serving only or intended to damage or destroy fishing implements by cutting or otherwise is also punishable on summary conviction (Sea Fisheries Act, 1883 (46 & 47 Vict. c. 22), s. 9). See also title FISHERIES.

(*n*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 33; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions. See also title HIGHWAYS, STREETS, AND BRIDGES.

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railway, or canal passing over or under the same, or any part thereof, dangerous or impassable.

The punishment for such offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without a whipping (*o*).

Destroying toll-bars etc.

1531. Everyone is by statute (*p*) guilty of a misdemeanour who unlawfully and maliciously throws down, levels, or otherwise destroys in whole or in part any turnpike, gate, or toll-bar, wall, chain, rail, post, bar, or other fence (*q*) belonging thereto, or set up to prevent passengers passing by without paying any statutory toll, or any house, building, or weighing engine erected for the better collection, ascertainment, or security of any such toll.

The punishment for this offence is imprisonment with or without hard labour, or fine, or both (*r*).

SUB-SECT. 11.—*Injuries to Railways.*

Obstructing railways.

1532. Everyone by statute (*s*) commits a felony who unlawfully and maliciously puts, places, casts, or throws upon or across any railway, whether public or private (*a*), any wood, stone, or other matter or thing; or takes up, removes, or displaces any rail, sleeper, or other thing belonging to any railway; or turns, moves, or diverts any points or other machinery belonging to any railway; or makes or shows, hides, or removes any signal or light on or near any railway; or does or causes to be done any other act with intent to obstruct, upset, overthrow, injure, or destroy any engine, tender, carriage, or truck using such railway (*b*).

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, a whipping (*c*).

(*o*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 33.

(*p*) *Ibid.*, s. 34, Since the passing of the Act turnpike roads have almost if not entirely ceased to exist, but the provisions of the section may still be of practical importance with regard to toll-bars, toll-houses, weighing machines etc.

(*q*) *Ibid.*

(*r*) The offence is triable at quarter sessions.

(*s*) *Ibid.*, s. 35.

(*a*) *O'Gorman* v. *Sweet* (1890), 54 J. P. 663.

(*b*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 35. Such an act done out of mischief, without the design of injuring anyone, may be malicious (*R.* v. *Upton* (1851), 5 Cox, C. C. 298). As to malice generally, see p. 768, *ante*. A master is liable for the acts of his servants if he stands by while such acts are being done and encourages or orders them to do such acts (*Roberts* v. *Preston* (1860), 9 C. B. (N. S.) 208). Anyone who without lawful excuse (the proof whereof lies on the defendant) interferes with, removes, or alters any part of a tramway, or of the works connected therewith; or places or throws any stones, dirt, wood, refuse, or other material on any part of a tramway; or does or causes to be done anything in such manner as to obstruct any carriage using a tramway or to endanger the lives of persons therein or thereon, or knowingly aids or assists in the doing of any such thing, is liable on summary conviction (in addition to any proceedings by way of indictment or otherwise to which he may be subject) to a penalty not exceeding £5 (Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 50). And see title TRAMWAYS AND LIGHT RAILWAYS.

(*c*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 35; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is not triable at quarter sessions.

1533. Everyone is by statute (*d*) guilty of a misdemeanour who by any unlawful act, wilful omission, or neglect, obstructs, or causes to be obstructed, any engine or carriage using any railway, or aids or assists therein.

Obstructing trains.

The punishment is imprisonment not exceeding two years, with or without hard labour (*e*).

SUB-SECT. 12.—*Injuries to Telegraphs.*

1534. Everyone is by statute (*f*) guilty of a misdemeanour who unlawfully and maliciously cuts, breaks, throws down, destroys, injures, or removes any battery, machinery, wire, cable, post, or other matter or thing being part of, or used in or about the working of any electric or magnetic telegraph; or prevents or obstructs in any manner the sending, conveyance, or delivery of any communication by any such telegraph.

Injury to telegraphic apparatus.

The punishment for this offence is imprisonment not exceeding two years, with or without hard labour (*g*).

SUB-SECT. 13.—*Destroying Articles in Public Museum.*

1535. Everyone is by statute (*h*) guilty of a misdemeanour who unlawfully and maliciously destroys or damages (1) any book, manuscript, picture, print, statue, bust, or vase, or other article or thing kept for the purposes of art, science, or literature, or as an object of curiosity in any public museum, gallery, cabinet, library, or other repository which is either at all times, or from time to time, open to the public or any considerable number of persons by permission of the proprietor or by payment of money; (2) any picture, statue, monument, or other memorial of the dead, painted glass or other ornament or work of art in any church, chapel, or

Destroying books etc. in public museum.

(*d*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 36.

(*e*) *Ibid.* The offence is triable at quarter sessions. See also Railway Regulation Act, 1840 (3 & 4 Vict. c. 97), ss. 13, 14, 16. As to offences by railway servants and other persons upon railways, see title RAILWAYS AND CANALS. The offence of obstructing under s. 36 of the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), is committed by any person who, otherwise than by accident, leaves on a railway line any substance likely to cause an obstruction, though his object may not have been to create such obstruction, but merely to give the company's servants the trouble of removing the obstruction (*R.* v. *Holroyd* (1841), 2 Mood. & R. 339), or though the line may not yet be open to the public, and though no actual obstruction may have taken place (see *R.* v. *Bradford* (1860), 8 Cox, C. C. 309, C. C. R.). The obstruction contemplated is not confined to a physical obstruction. A person who improperly goes on a railway line and by raising his arms induces a driver to diminish speed is guilty of the offence (*R.* v. *Hardy* (1871), L. R. 1 C. C. R. 278); see also *R.* v. *Hadfield* (1870), L. R. 1 C. C. R. 253, in which case a drunken man got on a railway and turned the signals, thereby causing a luggage train to go very slowly, and he was held to have obstructed an engine and carriages within the meaning of the section. Moving points or other machinery of a railway with malicious intent is a felony under the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 35 (see p. 786, *ante*).

(*f*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 37.

(*g*) *Ibid.* Or the offender may be tried summarily and fined or imprisoned (*ibid.*). Anyone who unlawfully and maliciously by any overt act attempts to commit any such offence is liable to be tried summarily and fined or imprisoned (*ibid.*, s. 38). This offence is triable at quarter sessions. And see title TELEGRAPHS AND TELEPHONES.

(*h*) *Ibid.*, s. 39.

SECT. 5. Malicious Damage to Property.

meeting-house or other place of divine worship, or in any building belonging to the King or to any county, riding, division, city, borough, poor law union, parish, or place or any university or college or hall of any university, or to any inn of court, or in any street, square, churchyard, burial ground, public garden, or ground; (3) any statue or monument exposed to public view, or any ornament, railing, or fence surrounding such statue or monument.

The punishment for such an offence is imprisonment, with or without hard labour, for not more than six calendar months, and if the offender is a male under sixteen years, with or without a whipping (*i*).

SUB-SECT. 14.—*Injuries to Cattle etc.*

Killing etc. cattle.

1536. Every person is by statute (*k*) guilty of felony who unlawfully and maliciously kills, maims, or wounds any cattle (*l*).

The punishment is penal servitude for not more than fourteen nor less than three years, or imprisonment not exceeding two years, with or without hard labour (*m*).

(*i*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 39. The offence is triable at quarter sessions. Nothing in this section affects the right of any person to recover by action damages for the injury so committed (*ibid.*). Any person who injures or disfigures the obelisk known as Cleopatra's Needle, or any monument erected or to be erected on any of the Thames Embankments or other lands vested at the date of the Monuments (Metropolis) Act, 1878 (41 & 42 Vict. c. 29), in the Metropolitan Board of Works, or who posts any bill or placard, or who writes, cuts, prints, draws, or marks in any manner any word or character or any representation of any object on the obelisk or such monument, is liable to a penalty not exceeding £5, recoverable on summary conviction (Monuments (Metropolis) Act, 1878 (41 & 42 Vict. c. 29), s. 4).

(*k*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 40.

(*l*) The word "cattle" is not defined in the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97). Under a repealed statute (9 Geo. 1, c. 22) it was held to include horses, mares, and colts (*R.* v. *Paty* (1770), 2 East, P. C. 1074), geldings (*R.* v. *Mott* (1783), 2 East, P. C. 1075), pigs (*R.* v. *Chapple* (1804), Russ. & Ry. 77), and asses (*R.* v. *Whitney* (1824), 1 Mood. C. C. 3). For the purposes of the Dogs Act, 1906 (6 Edw. 7, c. 32), the word "cattle" is defined as including horses, mules, asses, sheep, goats, and swine (*ibid.*, s. 7). The indictment should state the species of cattle injured; "certain cattle" is not sufficient (*R.* v. *Chalkley* (1813), Russ. & Ry. 258). See also title ANIMALS, Vol. I., p. 369.

(*m*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 40; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. In *R.* v. *Woodward* (1796), 2 East, P. C. 653, on an indictment for killing two sheep, it was held that the property in them might be laid in the agister, but *quære* whether in an indictment under the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), it is necessary to allege to whom the property in part belongs (see *R.* v. *Newboult* (1872), 12 Cox, C. C. 148, C. C. R.); a charge of administering poison to a number of horses is established if the evidence shows that some of the poison was given to each of the horses (*R.* v. *Mogg* (1830), 4 C. & P. 364). A person who unlawfully and maliciously sets fire to a cow-house while a cow is in it, whereby the cow is burned to death, is guilty of "killing" the cow (*R.* v. *Haughton* (1833), 5 C. & P. 559); "maiming" implies permanent injury (*R.* v. *Jeans* (1844), 1 Car. & Kir. 539; *R.* v. *Owens* (1828), 1 Mood. C. C. 205, where the offence was blinding a mare by pouring acid into its eye); but "wounding" may be of a temporary character (*R.* v. *Haywood* (1801), Russ. & Ry. 16); setting on a dog to bite sheep is not "wounding" sheep (*R.* v. *Hughes* (1826), 2 C. & P. 420). Wounding may be inflicted by the hand as well as by an instrument (*R.* v. *Bullock* (1868), 11 Cox, C. C. 125, C. C. R.). It is apprehended that killing and maiming may likewise be done without an instrument. Any person who unlawfully and maliciously kills, maims or wounds any dog, bird, beast, or other

SUB-SECT. 15.—*Injuries to Shipping.*

SECT. 5. Malicious Damage to Property.

1537. Everyone by statute (*n*) commits a felony who unlawfully and maliciously casts away or in anywise destroys any ship or vessel, whether complete or in an unfinished state (*o*). Casting away ships.

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without a whipping (*p*).

A person is by statute (*q*) guilty of a felony who unlawfully and maliciously by any overt act attempts to cast away or destroy any ship or vessel under such circumstances that if the offence were committed the offender would be guilty of felony. Attempting to cast away ship.

The punishment for such an offence is penal servitude for not more than fourteen nor less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, a whipping (*r*).

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animal not being cattle, but being either the subject of larceny at common law, or ordinarily kept in confinement, or for any domestic purpose, is liable to be tried summarily and fined or imprisoned, and on a second conviction to be imprisoned (*ibid.*, s. 41). A person does not commit this offence who acts in the *bonâ fide* belief that what he does is necessary to protect himself from injury (*Hanway* v. *Boultbee* (1830), 4 C. & P. 350), his premises from trespass (*Daniel* v. *Jones* (1877), 2 C. P. D. 351), or his master's property from injury (*Miles* v. *Hutchings*, [1903] 2 K. B. 714). To constitute the offence it does not seem that the act charged must have been committed for the purpose of indulging a cruel disposition (see *Miles* v. *Hutchings*, *supra*). A person may not kill a dog where less violent measures can be used for the attainment of a lawful object. In *Daniel* v. *Jones*, *supra*, a person who laid poisoned meat in an inclosed garden for the purpose of destroying and who thereby destroyed a dog which trespassed therein, was held not to have committed an offence under the section. Such an act is, it would seem, however, an offence within the Poisoned Flesh Prohibition Act, 1864 (27 & 28 Vict. c. 115), s. 2. In *Smith* v. *Williams* (1892), 56 J. P. 840, it was held (on the authority of *Daniel* v. *Jones*, *supra*) that a person is entitled to shoot domestic fowls trespassing upon his sown land, *sed quære*, see *Miles* v. *Hutchings*, *supra*. Any person who wilfully and unlawfully administers to or causes to be administered to or taken by any horse, cattle, or domestic animal any poisonous or injurious drug or substance is liable (unless some reasonable cause or excuse is shown on his behalf), on summary conviction, to a fine or imprisonment (Drugging of Animals Act, 1876 (39 Vict. c. 13), s. 1); this Act does not apply to the owner, or person acting under authority of the owner of the horse, cattle, or other animal to which any drug or substance is administered (*ibid.*, s. 2); nor does the Act exempt a person from liability to any greater or other punishment under any other Act or law, so that he be not punished more than once for the same offence (*ibid.*, s. 3). See also title ANIMALS, Vol. I., p. 413.

(*n*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 42. As to setting fire to ships, see p. 772, *ante*.

(*o*) A ship is not cast away or destroyed which is only run aground or stranded on a rock and afterwards got off in such condition as to be easily refitted (*R.* v. *De Londo* (1765), 2 East, P. C. 1098). A small pleasure boat (eighteen feet long) is, it seems, a "ship or vessel" within this section (*R.* v. *Bowyer* (1831), 4 C. & P. 559).

(*p*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions. The same penalty is provided (s. 43) where the destruction is with intent to prejudice the owner or underwriter (see p. 772, *ante*).

(*q*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 44; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions.

(*r*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 46.

SECT. 5. Malicious Damage to Property.

Damaging ship with intent to destroy etc.

1538. Everyone by statute (*s*) commits a felony who unlawfully and maliciously damages otherwise than by fire, gunpowder, or other explosive substance any ship or vessel, whether complete or in an unfinished state, with intent to destroy or render useless the same.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, a whipping (*t*).

Altering signals with intent to endanger ship.

Everyone by statute (*a*) commits a felony who unlawfully masks, alters, or removes any light or signal or unlawfully exhibits any false light or signal with intent to bring any ship, vessel, or boat into danger, or unlawfully and maliciously does anything tending to the immediate loss or destruction of any ship, vessel, or boat for which no punishment is otherwise provided in the Malicious Damage Act, 1861 (*b*).

The punishment for this offence is penal servitude for life or for not less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, a whipping (*c*).

Cutting away buoys etc.

1539. Everyone by statute (*d*) commits a felony who unlawfully and maliciously cuts away, casts adrift, removes, alters, defaces, sinks, or destroys or does any act with intent to cut away etc. or in any other manner injures or conceals any boat, buoy, buoy-rope, perch, or mark used or intended for the guidance of seamen or the purpose of navigation.

The punishment for this offence is penal servitude for not more than seven nor less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without a whipping (*e*).

Destroying ship in distress.

1540. Everyone by statute (*f*) commits a felony who unlawfully and maliciously destroys any part of any ship or vessel in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel.

The punishment for this offence is penal servitude for not more than fourteen nor less than three years, or imprisonment not exceeding two years, with or without hard labour (*g*).

(*s*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 46.
(*t*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions.
(*a*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 47.
(*b*) 24 & 25 Vict. c. 97.
(*c*) *Ibid.*, s. 47; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is not triable at quarter sessions.
(*d*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 48.
(*e*) *Ibid.*; Penal Servitude Act, 1898 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions.
(*f*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 49.
(*g*) *Ibid.*; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions. Wilful damage to a ship or her stores or cargo by a seaman is also an offence under the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 225 (f).

SUB-SECT. 16.—*Threats to Burn etc. House.*

SECT. 5. Malicious Damage to Property.

1541. Any person by statute (*h*) is guilty of felony who sends, delivers, or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any house, barn, or other building, or any rick or stack of grain, hay, or straw or other agricultural produce, or any grain, hay, or straw or other agricultural produce in or under any building, or any ship or vessel, or to kill, maim, or wound any cattle.

Sending letter threatening to burn house etc.

The punishment for this offence is penal servitude for not more than ten nor less than three years, or imprisonment with or without hard labour, and if the offender is a male under sixteen, with or without a whipping (*i*).

SUB-SECT. 17.—*Miscellaneous.*

1542. Everyone is by statute (*k*) guilty of a misdemeanour who unlawfully and maliciously commits to or on any real or personal property (*l*) whatsoever any damage, injury, or spoil to an amount exceeding £5 (*m*) for which no punishment is specifically provided by the Malicious Damage Act, 1861 (*n*).

Malicious damage to amount exceeding £5.

The punishment is imprisonment for two years with or without hard labour, or, if the offence be committed between 9 p.m. and 6 a.m., penal servitude for not more than five nor less than three years, or imprisonment for not more than two years with or without hard labour (*o*).

(*h*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 50. The wording of this section makes the case of *R.* v. *Hill* (1851), 5 Cox, C. C. 233, inapplicable now as an authority. It is for the jury to say, looking both at the letter itself and the situation of the parties, whether a letter contains a threat (*R.* v. *Tyler* (1835), 1 Mood. C. C. 428; *R.* v. *Carruthers* (1844), 1 Cox, C. C. 138). But the judge may hold that there is no evidence of a threat to go to the jury (*R.* v. *Carruthers, supra*).

(*i*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 50; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. This offence is triable at quarter sessions.

(*k*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 51.

(*l*) The words real or personal property mean corporeal, tangible, and visible property; they do not apply to incorporeal rights, such as a right of herbage (*Laws* v. *Eltringham* (1881), 8 Q. B. D. 283); nor do they apply to products growing upon realty but not part of the realty itself, *e.g.* mushrooms (*Gardner* v. *Mansbridge* (1887), 19 Q. B. D. 217), but they apply to grass (*Gayford* v. *Chouler*, [1898] 1 Q. B. 316).

(*m*) Where several articles are damaged it is not necessary to allege in the indictment the value of each, but only that the amount of damage exceeds £5 (*R.* v. *Thoman* (1871), 12 Cox, C. C. 54, C. C. R.).

(*n*) 24 & 25 Vict. c. 97.

(*o*) *Ibid.*, s. 51; Penal Servitude Act, 1891 (54 & 55 Vict. c. 69), s. 1. The offence is triable at quarter sessions. If the damage does not amount to £5 and is committed either wilfully or maliciously, the offender may be tried summarily and fined or imprisoned, in addition to being required to make compensation as assessed by the justice (not exceeding £5) (*ibid.*, s. 52). A trespass on short grass in the winter, made in the course of playing a game, has been held not to be wilful (*Eley* v. *Lytle* (1885), 50 J. P. 308), but trespass in long grass after warning, and coupled with a refusal to turn back, has been held to be both wilful and malicious (*Gayford* v. *Chouler*, [1898] 1 Q. B. 316). It is not necessary to constitute an offence under the section that the act should be both wilful and malicious; it is sufficient that it should be either one or the other (see *Gardner* v. *Mansbridge, supra, per* SMITH, J.; *Roper* v. *Knott* (1898), 19 Cox, C. C. 69;

SECT. 5. **Malicious Damage to Property.**

Making gunpowder with intent to commit felony.

1543. Any person by statute (*p*) commits a misdemeanour who makes or manufactures, or knowingly has possession of, any gunpowder or other explosive substance, or any dangerous or noxious thing, or any machine, engine, instrument or thing with intent thereby to commit or enable another person to commit, any of the felonies specified in the Malicious Damage Act, 1861 (*q*).

The punishment for this offence is imprisonment for not more than two years, with or without hard labour, and if the offender is a male under sixteen, a whipping (*r*).

SUB-SECT. 18.—*Proceedings under the Malicious Damage Act*, 1861.

Accessories.

1544. In the case of every felony punishable under the Malicious Damage Act, 1861 (*s*), every principal in the second degree, and every accessory before the fact, is punishable in the same manner as the principal in the first degree, and every accessory after the fact is liable to imprisonment not exceeding two years, with or without hard labour (*t*).

Aiding and abetting.

1545. Any person who aids, abets, counsels, or procures the commission of any misdemeanour punishable under the Act may be proceeded against, indicted and punished as a principal offender (*a*).

Venue in Admiralty cases.

1546. In any indictment for any offence under the Malicious Damage Act, 1861 (*b*), committed within the jurisdiction of the Admiralty, or for being an accessory to such an offence, the venue in the margin of the indictment must be the same as if the offence had been committed in the place where the accused was apprehended or is in custody, and the offence must be averred to have been committed "on the high seas" (*c*).

Hamilton v. *Bone* (1888), 16 Cox, C. C. 437). Therefore, in the case of any such offence, if property has been wilfully damaged, though not maliciously, the offence has been committed. Thus a milkman commits an offence under this section who fraudulently damages milk by diluting it with water with the intention of increasing the quantity of milk and putting the surplus money into his own pocket (*Roper* v. *Knott* (1898), 19 Cox, C. C. 69). The court in this case refused to follow *Hall* v. *Richardson* (1889), 54 J. P. 345, where it had been held that a milkman who after accidentally spilling some milk had diluted the remainder to make up the full quantity, in his master's supposed interest, was not guilty of wilfully or maliciously damaging the remainder; see also *Hamilton* v. *Bone*, *supra*; *Denny* v. *Thwaites* (1876), 2 Ex. D. 21. A person who wilfully or maliciously commits any damage to any real or personal property, where the damage does not exceed £5, and where no punishment is provided by the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), is punishable on summary conviction (*ibid.*, ss. 52, 53).

(*p*) Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 54.

(*q*) 24 & 25 Vict. c. 97.

(*r*) *Ibid.*, s. 54. Power is given to a justice upon reasonable cause assigned upon oath to issue a warrant for the search of certain specified places where the same may be suspected to be made, kept, or carried (*ibid.*, s. 55). The offence is triable at quarter sessions.

(*s*) 24 & 25 Vict. c. 97.

(*t*) *Ibid.*, s. 56. As to principals and accessories, see p. 247, *ante*.

(*a*) *Ibid.*

(*b*) 24 & 25 Vict. c. 97.

(*c*) *Ibid.*, s. 72. As to the Admiralty jurisdiction, see p. 273, *ante*.

SECT. 5. Malicious Damage to Property.

1547. Any person convicted of any indictable misdemeanour, punishable under the Malicious Damage Act, 1861 (*d*), may, in addition to or in lieu of the punishment authorised thereunder, be fined and required to enter into his own recognisances, and to find sureties, both or either, for keeping the peace and being of good behaviour. Power to fine etc.

In the case of a felony he may be required to enter into his own recognisance and to find sureties, both or either, for keeping the peace in addition to any punishment authorised thereunder; but no person may be imprisoned under this clause for not finding sureties for more than one year (*e*).

SECT. 6.—*Offences relating to Game.*

1548. Certain statutory offences, punishable on indictment, have been created with regard to taking or killing game, hares, rabbits, and other wild animals, and with regard to trespassing in pursuit of game (*f*). Poaching etc.

(*d*) 24 & 25 Vict. c. 97.

(*e*) *Ibid.*, s. 73. As to whipping of offenders, see *ibid*, s. 75, and p. 411, *ante*. When a person convicted of any offence punishable upon summary conviction by virtue of the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), has paid the sum adjudged to be paid together with the costs under such conviction, or has received a remission of such penalty from the Crown, or has suffered imprisonment for nonpayment or the imprisonment awarded in the first instance, he is to be released from all further or other proceedings for the same cause (*ibid.*, s. 67); see Greaves, Criminal Law Consolidation Acts, 2nd ed., 71. As to apprehension without warrant under the Act, see p. 303, *ante*. As to search warrants in the case of offences under the Act, see p. 301, *ante*.

(*f*) See Night Poaching Act, 1828 (9 Geo. 4, c. 69); Night Poaching Act, 1844 (7 & 8 Vict. c. 29); Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 12—17. These offences are dealt with under title GAME; see also title ANIMALS, Vol. I., p. 371.

CROPS AND GROWING PRODUCE.

See AGRICULTURE; LANDLORD AND TENANT; SALE OF LAND.

CROWN LANDS.

See CONSTITUTIONAL LAW.

END OF VOL. IX.

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